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[New Hampshire Code of Administrative Rules](#)
[Env-Ws 400-455](#)

CHAPTER Env-Ws 400 PROTECTION OF STATE SURFACE WATERS

PART Env-Ws 401 SURFACE WATER DISCHARGE PERMIT REGULATIONS

Env-Ws 401.01 Purpose. The purpose of these rules is to describe NPDES application and hearing procedures jointly followed by the department and EPA, in accordance with section 402 of the Clean Water Act, and to describe the application procedures, permit conditions and permit durations followed by the department in accordance with the Clean Water Act and RSA 485-A. These rules supplement the requirements for an EPA administered NPDES permit program found at 40 CFR Part 122.

Source. #589, eff 11-12-74; ss by #2239, eff 12-31-82; ss by #2670, eff 4-12-84, exp. 4-12-90; ss by #5063, eff 2-4-91; EXPIRED 2-4-97

New. #6460, INTERIM, eff 2-21-97; EXPIRED 6-21-97

New. #6533, eff 6-28-97

PART Env-Ws 402 APPLICABILITY

Env-Ws 402.01 Applicability. These rules shall apply to all direct discharges of point source pollutants to surface waters of the state. These rules shall not apply to those activities requiring water quality certifications pursuant to section 401 of the Clean Water Act which are regulated pursuant to Env-Ws 451 through 455 or to indirect discharges to a POTW which are regulated pursuant to Env-Ws 904.

Source. #574, eff 10-13-74; ss by #2242, eff 12-31-82; ss by #2670, eff 4-12-84, EXPIRED 4-12-90

New. #6533, eff 6-28-97

PART Env-Ws 403 DEFINITIONS

Env-Ws 403.01 "Bypass" means bypass as defined in RSA 485-A:2, XVII, namely, "the intentional diversion of waste streams from any portion of the wastewater facilities."

Source. #223.2, eff 8-31-73; ss by #2241, eff 12-31-82; ss by #2670, eff 4-12-84, EXPIRED 4-12-90; ss by #5063, 2-4-91; EXPIRED 2-4-97

New. #6460, INTERIM, eff 2-21-97; EXPIRED 6-21-97

New. #6533, eff 6-28-97

Env-Ws 403.02 "CFR" means the Code of Federal Regulations published by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Source. #223.8, eff 8-31-73; ss by #2241, eff 12-31-82; ss by #2670, eff 4-12-84, EXPIRED 4-12-90; ss by #5063, eff 2-4-91; EXPIRED 2-4-97

New. #6460, INTERIM, eff 2-21-97; EXPIRED 6-21-97

New. #6533, eff 6-28-97

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Ws 403.03 "Clean water act" means the Federal Clean Water Act, pub. L. 92-500 as amended by pub. L. 95-217, pub. L. 95-576, pub. L. 96-483, pub. L. 97-117, pub. L. 100-4, 33 U.S.C. 1251 et seq.

Source. #223, eff 8-31-73; ss by #2241, eff 12-31-82; ss by #2670, eff 4-12-84; amd by #4188, eff 12-11-86, EXPIRED 12-11-90; ss by #5063, eff 2-4-91; EXPIRED 2-4-97

New. #6460, INTERIM, eff 2-21-97; EXPIRED 6-21-97

New. #6533, eff 6-28-97

Env-Ws 403.04 "Department" means the department of environmental services.

Source. #5063, eff 2-4-91; EXPIRED 2-4-97

New. #6460, INTERIM, eff 2-21-97; EXPIRED 6-21-97

New. #6533, eff 6-28-97

Env-Ws 403.05 "Designated uses" means those uses specified in RSA 485-A:8 and Env-Ws 1700.

Source. #6533, eff 6-28-97

Env-Ws 403.06 "Direct discharge" or "discharge" means the addition, introduction, leaking, spilling, or emitting of a pollutant to waters of the state, whether done intentionally, unintentionally, negligently or otherwise.

Source. #6533, eff 6-28-97

Env-Ws 403.07 "Effluent limitations" or "limitations" means any restriction(s) imposed by the department pursuant to RSA chapter 485-A on quantities, discharge rates, characteristics, and concentrations of pollutants which are discharged to waters of the state.

Source. #6533, eff 6-28-97

Env-Ws 403.08 "EPA" means the United States Environmental Protection Agency.

Source. #6533, eff 6-28-97

Env-Ws 403.09 "Existing uses" means those uses actually attained in the waterbody on or after November 28, 1975, whether or not they are included in Env-Ws 1700. The term does not include assimilation or transport of pollutants.

Source. #6533, eff 6-28-97

Env-Ws 403.10 "Indirect discharge" means the introduction of pollutants into a POTW from any non-domestic source.

Source. #6533, eff 6-28-97

Env-Ws 403.11 "Industrial waste" means industrial waste as defined in RSA 485-A: 2, VI, namely, "any liquid, gaseous or solid waste substance resulting from any process of industry, manufacturing trade or business or from development of any natural resources."

Source. #6533, eff 6-28-97

Env-Ws 403.12 "NPDES" means National Pollutant Discharge Elimination System, which is the federal surface water discharge permitting program required pursuant to section 402 of the Clean Water Act.

Source. #6533, eff 6-28-97

Env-Ws 403.13 "Other waste" means other waste as defined in RSA 485-A:2, VIII, namely, "garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, ashes, offal, oil, tar, chemicals and other substances other than sewage or industrial wastes, and any other substance harmful to human, animal, fish or aquatic life."

Source. #6533, eff 6-28-97

Env-Ws 403.14 "Point source" means a discernible, confined and discrete conveyance from which pollutants are or might be discharged. The term includes but is not limited to a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or a floating craft. The term does not include return flows from irrigated agriculture.

Source. #6533, eff 6-28-97

Env-Ws 403.15 "Pollutant" means any dredged material, solid waste, incinerator residue, sewage, filter backwash, garbage, sewage sludge, septage, munitions, chemical wastes, biological materials, genetically engineered or altered materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil or industrial, municipal or agricultural waste, or any other substance in concentrations or amounts that when in contact with surface waters of the state, could create a nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare; to plant, animal or aquatic life; or to other designated or existing uses.

Source. #6533, eff 6-28-97

Env-Ws 403.16 "Publicly owned treatment works" (POTW) means a pollution control facility which is owned by a municipality.

Source. #6533, eff 6-28-97

Env-Ws 403.17 "Receiving water" means the surface waters of the state into which pollutants are or may be discharged.

Source. #6533, eff 6-28-97

Env-Ws 403.18 "Sewage" means sewage as defined in RSA 485-A:2, X, namely, "the water carried waste products from buildings, public or private, together with such groundwater infiltration and surface water as may be present."

Source. #6533, eff 6-28-97

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Ws 403.19 "Sewerage" means any system of piping, pumps, basins, tanks, unit processes, and appurtenances for collecting, transporting, treating and discharging sewage.

Source. #6533, eff 6-28-97

Env-Ws 403.20 "Surface waters of the state" means surface waters of the state as defined in RSA 485-A:2, XIV, namely, "streams, lakes, ponds and tidal waters within the jurisdiction of the state, including all streams, lakes or ponds bordering on the state, marshes, water courses and other bodies of water, natural or artificial." The term includes wetlands. The term does not include nontidal drainage ditches which were designed, built and used to convey wastewater or stormwater. They also do not include constructed wetlands, cooling ponds, lagoons and other treatment systems designed and built solely as wastewater or stormwater treatment systems provided such facilities were not initially constructed in waters of the state or were not constructed to serve other mitigation purposes.

Source. #6533, eff 6-28-97

Env-Ws 403.21 "Tidal waters" means those portions of the Atlantic Ocean within the jurisdiction of the state, and other waters of the state subject to the rise and fall of the tide.

Source. #6533, eff 6-28-97

Env-Ws 403.22 "Wetland" means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs and similar areas.

Source. #6533, eff 6-28-97

PART Env-Ws 404 NPDES PERMITS

Authority: RSA 485-A:4

Env-Ws 404.01 Hearings. Opportunity for hearing, and comments to NPDES permits shall be undertaken jointly with the EPA, in accordance with procedures set forth in 40 CFR 124.

Source. #2670, eff 4-12-84, EXPIRED 4-12-90

New. #6533, eff 6-28-97

Env-Ws 404.02 Permit Application. Applicants for a NPDES permit shall follow the regulations set forth in 40 CFR 122. Applicants for a state surface water discharge permit shall also follow the regulations set forth in 40 CFR 122 and Env-Ws 405.

Source. #6533, eff 6-28-97

PART Env-Ws 405 STATE SURFACE WATER DISCHARGE PERMITS

Authority: RSA 485-A:13

Env-Ws 405.01 Application Procedure.

(a) Application for a state surface water discharge permit or modification thereto shall be made in writing to the department.

(b) The application shall contain the following:

- (1) A copy of the completed federal NPDES Permit application including all forms and any supplemental information provided to EPA;
 - (2) Unit process flow diagram and design data for existing and proposed waste treatment facilities;
 - (3) A list of water supply source(s). If more than one source is discharged, the percent for each shall be reported;
 - (4) Original or color copy of a 7 1/2 minute series USGS Quadrangle map showing the location of the facility and all discharge pipes to the receiving waterbody. If a 7 1/2 minute map is unavailable, a 15-minute series shall be acceptable; and
 - (5) Facility site plan showing buildings, outfall locations, surface waters, and drainage in sufficient detail so that they can be located on site.
- (c) Industrial permit applicants shall submit either building floor plan sketches or a schematic accompanied by a detailed narrative description of each floor showing or describing floor drains, wash sinks and all cooling water/wastewater flow in sufficient detail so that they can be located on site.
- (d) Applicants may reference any of the information included in the NPDES application as appropriate to satisfy any requirement listed in this section.
- (e) An applicant for a new discharge or increased discharge of pollutants at an existing facility shall immediately contact the department to determine if any instream water quality information shall be required. If the department lacks the instream water quality data necessary to assess the impact of the discharge on the receiving water, the department shall require the applicant to submit the necessary data.

Source. #4590, eff 3-27-90, EXPIRED 3-27-96

New. #6533, eff 6-28-97

Env-Ws 405.02 Conditions Common to all Permits.

- (a) The permittee shall not at any time, either alone or in conjunction with any person or persons, cause directly or indirectly the discharge of any pollutant into receiving waters except pollutants that have been treated in such a manner as shall not lower the applicable class water quality, interfere with the existing uses or designated uses assigned to waters by the legislature, exceed the effluent limitations, or violate the conditions listed in the permit.
- (b) The permittee shall provide effective operation and maintenance of the pollution control facilities, which means that the facility shall be operated and maintained in accordance with the plant operation and maintenance manuals and manufacturer's equipment manuals, so as to meet the permit limitations.
- (c) The permittee shall use only those laboratories that have adequate controls and quality assurance procedures in accordance with 40 CFR 122.41(e) as confirmed by the DES laboratory for performing analyses required by the permit.
- (d) The permittee shall monitor all discharges in accordance with the conditions specified in the permit. All analyses shall be performed in accordance with 40 CFR 136 unless other test procedures have been specified in the permit.
- (e) Copies of EPA Discharge Monitoring Reports (DMRs) shall be postmarked and sent to the department by the 15th day of the following month.

(f) The permittee shall retain records at the permitted facility of the following:

- (1) Monitoring data;
- (2) Monitoring equipment calibration records;
- (3) Monitoring equipment maintenance records;
- (4) Original strip chart recordings from continuous monitoring instrumentation;
- (5) Copies of all reports required by the permit; and
- (6) Records of all data used to complete the application for the permit.

(g) The records shall be retained for a period of 3 years from the date of the sample, measurement, report or application. This period shall be extended through the duration of any enforcement action.

(h) The permittee shall allow any authorized employee or agent of the department to enter any land or establishment of the company during the normal business hours for the purpose of collecting samples, conducting dye tests, making video recordings, examining and copying any records, or taking photographs, necessary to the investigation and enforcement of the water pollution control laws of the State of New Hampshire.

(i) The effluent limitations contained in the permit and the stream classification requirements as provided by RSA 485-A:8 shall be met and maintained at all times. Whenever it is demonstrated that the effluent limitations are not adequate to maintain said stream classification requirements, the permittee shall be required to conform to such limitations as shall be necessary for the maintenance of such requirements.

(j) The department shall periodically review and revise, as necessary, the conditions of the permit so that water quality standards, existing uses and designated uses shall be maintained and protected at all times.

(k) The permit to discharge treated wastes shall not be transferable except under the conditions listed in 40 CFR 122.61.

(l) The permittee shall give notice in accordance with RSA 485-A:13,I(c), whenever a bypass or upset of a treatment facility occurs.

(m) Permittees that discharge treated wastewater to tidal waters shall provide immediate notification to the department and the New Hampshire department of health and human services in the event of a discharge of untreated sewage or the bypass of a disinfection system.

(n) Pursuant to RSA 485-A:13,I(a), if additional conditions or limitations are necessary to ensure that the discharge does not pose a threat to public health or safety or the environment, the department shall include such conditions or limitations in the permit that is issued or modified.

(o) All modifications of the limitations or conditions of the permit made pursuant to Env-Ws 405.02(i), Env-Ws 405.02(j), or Env-Ws 405.02(n) are subject to the hearing provisions contained in Env-Ws 401.01 which are consistent with RSA 541-A:30.

Source. #4590, eff 3-27-90, EXPIRED 3-27-96

New. #6533, eff 6-28-97

Env-Ws 405.03 Conditions of Industrial Permits.

(a) The permittee shall give written notice to the department whenever a change in process or production will affect the character or quantity of the discharge or the sludge such that new or revised permit limitations or conditions would be necessary. The written notice shall be made at least 30 days in advance of such anticipated change.

(b) Changes that are reported to the department in accordance with section 405.03(a) that the department determines will require a major modification or revocation and reissuance of the permit in accordance with 40 CFR 122.62 shall not be made until the NPDES and state surface water discharge permit is either modified or reissued. Information furnished to the department under this section shall be considered confidential when so requested by the permittee if it is in accordance with RSA 485-A:18.

Source. #4590, eff 3-27-90, EXPIRED 3-27-96

New. #6533, eff 6-28-97

Env-Ws 405.04 Conditions of Municipal Permits.

(a) Failure to provide effective operation and maintenance of the pollution control facilities, as described in Env-Ws 405.02(b), shall result in loss of payments of the annual grant installment in accordance with the provisions of RSA 486:8.

(b) The permittee shall not accept for disposal and shall not dispose through its pollution control facility any increase in pollutant loading, additional sewage or other wastes without first obtaining written permission from the department in accordance with Parts Env-Ws 720 and Env-Ws 904.

(c) The permittee shall maintain a system of permits as required by Env-Ws 904 for the discharge of industrial wastes into the municipal sewerage system. Such permits shall be of limited duration and shall specify the quantity and physical and chemical characteristics of such discharge including specific concentration limits for parameters reasonably expected to be present. Copies of such permits issued by the permittee shall be filed with the department upon request. The department shall require such permits when there is reason to believe a violation has occurred.

Source. #4590, eff 3-27-90, EXPIRED 3-27-96

New. #6533, eff 6-28-97

Env-Ws 405.05 Duration of State Surface Water Discharge Permits. State surface water discharge permits shall run concurrently with federal NPDES permits in accordance with 40 CFR 122.46.

Source. #4590, eff 3-27-90; amd by #4757, eff 2-6-90, EXPIRED 2-6-96

New. #6533, eff 6-28-97

PARTS Env-Ws 406 through 409 - RESERVED

PART Env-Ws 410 PROTECTION OF GROUNDWATER - EXPIRED AND MOVED TO **Env-Wm 1403**

Source. #1618, eff 8-5-80; ss by #1949, eff 2-8-82; ss by #2670, eff 4-12-84, EXPIRED: 4-12-90

New. #5579, eff 2-11-93, EXPIRED and MOVED to Env-Wm 1403 by #6945, eff 2-24-99

PART Env-Ws 411 UNDERGROUND STORAGE AND HANDLING OF OIL AND PETROLEUM LIQUIDS - RESERVED

Statutory Authority: RSA 146-C:9 and RSA 146-A:11-c

Source. #3116, eff 9-17-85; amd by #3160, eff 12-16-85; ss by #4965, eff 11-2-90; EXPIRED 11-2-96

New. #6370, INTERIM, eff 11-16-96, EXPIRED: 3-16-97

PART Env-Ws 412 REPORTING AND REMEDIATION OF OIL DISCHARGES

Statutory Authority: RSA 146-A:11-C

Env-Ws 412.01 Purpose. The purpose of these rules is to establish procedures and requirements for notification, reporting, response actions, and investigations for sites where discharges of oil have occurred.

Source. #4966, eff 11-2-90; EXPIRED 11-2-96

New. #6371, INTERIM, eff 11-16-96, EXPIRES 3-16-97; ss by #6386, eff 11-26-96

Env-Ws 412.02 Applicability. Any responsible party or other person having knowledge of a discharge or spillage of oil into the surface waters and groundwaters of the state, or in land area where the oil will ultimately seep into groundwater or surface water shall report such discharge to the department immediately, unless all of the following conditions are met:

- (a) The discharge is less than 25 gallons;
- (b) The discharge is immediately contained;
- (c) The discharge and contamination is completely removed within 24 hours; and
- (d) There is no impact to groundwater or surface water.

Source. #4966, eff 11-2-90; EXPIRED 11-2-96

New. #6371, INTERIM, eff 11-16-96, EXPIRES 3-16-97; ss by #6386, eff 11-26-96

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Ws 412.03 Definitions.

(a) "Contamination" or "contaminated" means the results of discharge of oil into groundwater, surface water or soil.

(b) "Discharge" or "spillage" means the release or addition of any oil to land, groundwater, surface water or subsurface utility.

(c) "Department" means the New Hampshire department of environmental services.

(d) "Free product" means oil which exists as a separate phase or layer of greater than 1/8" thickness on water.

(e) "Groundwater" means "groundwater" as defined in RSA 146-A:2,I-c, namely "subsurface water that occurs beneath the water table in soils and geologic formations."

(f) "Initial site characterization" means a preliminary assessment following a discharge which is performed to collect information regarding the subsurface conditions of a site, the extent of the discharge, and potential receptors in the area.

(g) "Oil" means "oil" as defined in RSA 146-A:2,III namely "petroleum products and their by-products of any kind, and in any form including, but not limited to, petroleum, fuel, sludge, crude, oil refuse or oil mixed with wastes and all other liquid hydrocarbons regardless of specific gravity and which are used as motor fuel, lubricating oil, or any oil used for heating or processing. The term "oil" shall not include natural gas, liquefied petroleum gas or synthetic natural gas regardless of derivation or source."

(h) "PAH" means polyaromatic hydrocarbons.

(i) "Potential receptor" means any living organism or environmental medium which is in the pathway of contamination from a discharge.

(j) "Ppm" means parts per million.

(k) "Receptor" means a living organism or an environmental medium which is exposed to contamination from a discharge.

(l) "Responsible party(ies)" means any person who is strictly liable for a discharge of oil under RSA 146-A:3-a.

(m) "Site" means the place or location where a discharge is known or suspected to have occurred.

(n) "Surface water" means "surface water" as defined by RSA 146-A:2,VI-b, namely "streams, lakes, ponds, and tidal waters within the jurisdiction of the state, including all streams, lakes or ponds bordering on the state, marshes, water courses and other bodies of water, natural or artificial."

(o) "TPH" means total petroleum hydrocarbons.

(p) "VOC" means volatile organic compounds.

Source. #4966, eff 11-2-90; EXPIRED 11-2-96

New. #6371, INTERIM, eff 11-16-96, EXPIRES 3-16-97; ss by #6386, eff 11-26-96

Env-Ws 412.04 Notification.

(a) Persons notifying the department of confirmed or suspected discharges of oil shall provide as much of the following information as is available:

- (1) The name and phone number of the person notifying the department;
- (2) The location of the discharge site;
- (3) The date and time of the discharge;
- (4) The type and amount of oil discharged;
- (5) The name(s) and phone number(s) of the party(ies) potentially responsible for the discharge;
- (6) How close to surface water the discharge occurred;
- (7) Whether a clean-up contractor has been contacted or hired, and if so, the name, address and telephone number of the contractor; and
- (8) The cause of the incident.

(b) If the spill occurs during normal working hours, notification shall be directly to the department. If the reporting party is unable to contact the department, notification shall be to the state police communications center.

Source. #4966, eff 11-2-90; EXPIRED 11-2-96

New. #6371, INTERIM, eff 11-16-96, EXPIRES 3-16-97; ss
by #6386, eff 11-26-96

Env-Ws 412.05 Initial Response Action. When a discharge occurs, any responsible party shall take the following actions immediately:

- (a) Assess the situation and evaluate fire, health and safety hazards;
- (b) Stop the discharge;
- (c) Notify the department or state police as required under Env-Ws 412.04;
- (d) Contain and remove all discharged oil and oil-contaminated debris;
- (e) Stockpile and/or dispose of discharged oil and oil-contaminated materials in accordance with all applicable local, state and federal rules;
- (f) Monitor and mitigate fire, health and safety hazards posed by vapors or free product;
- (g) Take any action necessary to prevent environmental damage from the discharge; and
- (h) Investigate to determine the possible presence of free product.

Source. #4966, eff 11-2-90; EXPIRED 11-2-96

New. #6371, INTERIM, eff 11-16-96, EXPIRES 3-16-97; ss
by #6386, eff 11-26-96

Env-Ws 412.06 Abatement Measures.

(a) If the presence of vapors which pose an imminent threat to public safety are identified at any stage of the investigation, the responsible party(ies) shall give verbal notification of the analytical results to the department immediately after discovery and, within 5 days, shall submit the air quality results in writing to the department, the department of health and human services' division of public health services (DHHS-DPHS) and the owner of the property.

(b) The responsible party(ies) shall implement abatement measures to eliminate explosive situations and reduce the concentration of contaminants in the air to acceptable levels established by a risk assessment approved or performed by the DHHS-DPHS in accordance with RSA 125-H:3, I and II. Prior to implementing the abatements measures, the responsible party(ies) shall notify the department and the owner(s) of the property(ies) of the proposed action.

(c) If contamination is detected in drinking water well(s) at any stage of the investigation, the responsible party(ies) shall give verbal notification of the analytical results to the department immediately after discovery and, within 5 days, shall submit the water quality results, in writing, to the department, the DHHS-DPHS and the owner(s) of the drinking water well(s).

(d) The responsible party(ies) shall implement abatement measures to reduce the contaminants to acceptable levels established by a risk assessment approved or performed by the DHHS-DPHS in accordance with RSA 125-H:3, I and II. Prior to implementing the abatement measures, the responsible party(ies) shall notify the department and the owner(s) of the drinking water well(s) of the proposed action.

Source. #4966, eff 11-2-90; EXPIRED 11-2-96

New. #6371, INTERIM, eff 11-16-96, EXPIRES 3-16-97; ss by #6386, eff 11-26-96

Env-Ws 412.07 Free Product Removal.

(a) At sites where free product is present, responsible parties shall provide verbal notification of the existence of free product to the department immediately after discovery and provide written notification within 5 days of discovery. Responsible parties shall remove the free product in a manner that minimizes the spread of contamination.

(b) Discharges and by-products from free product recovery and disposal operations shall be treated or disposed of in compliance with applicable local, state and federal regulations.

(c) Free product removal systems shall be designed to completely remove free product.

(d) Flammable products shall be handled in a safe and competent manner to prevent fires or explosions.

(e) Documentation of free product removal measures shall be submitted to the department with the initial site characterization report required under Env-Ws 412.08 that contains the following information:

- (1) The name of the person(s) responsible for implementing the free product removal measures;
- (2) The estimated quantity, type, and depth of free product layer observed or measured;
- (3) A description of the free product recovery system used;
- (4) Whether any discharge of treated water takes place on-site or off-site during the recovery operation and where this discharge is located;

- (5) The type of treatment applied to any contaminated water pumped or extracted to effect free product removal;
 - (6) The steps that have been or are being taken to obtain necessary permits for any discharge of treated water; and
 - (7) The disposition of the recovered free product.
- (f) The responsible party(ies) shall give verbal notification of the presence of free product which is identified at any stage of the investigation to the department immediately after discovery and shall give written notification within 5 days of discovery.

Source. #4966, eff 11-2-90; EXPIRED 11-2-96

New. #6371, INTERIM, eff 11-16-96, EXPIRES 3-16-97; ss
by #6386, eff 11-26-96

Env-Ws 412.08 Initial Site Characterization.

- (a) Responsible parties shall conduct an initial site characterization unless the discharge and the contamination is completely removed and there is no impact or potential impact to groundwater or surface water, confirmed by soil and/or groundwater samples.
- (b) If groundwater contamination is present, an initial site characterization shall not be required and the responsible party shall conduct a site investigation in accordance with Env-Ws 412.10.
- (c) Responsible parties shall conduct field investigations to assess the contamination in the area of the discharge.
- (d) Responsible parties shall sample the environment most likely to be contaminated by a confirmed or suspected discharge.
- (e) Environmental samples collected at the site may be field screened with an organic vapor analyzer but in all cases shall be analyzed at an EPA or a department certified laboratory.
- (f) Responsible parties shall submit a site characterization report to the department within 60 days of notifying the department of the release.
- (g) The site characterization report required pursuant to (f) above shall include the following:
 - (1) Data on the nature, location, and estimated quantity of the discharge;
 - (2) Data from available sources or other investigations concerning:
 - a. Surrounding populations;
 - b. Water quality;
 - c. Use and approximate locations of drinking water supplies potentially affected by the discharge;
 - d. Subsurface soil conditions;
 - e. Locations of underground utilities, drains, and sewers; and

f. Land use.

- (3) Documentation of free product removal; and
- (4) A preliminary assessment of receptors and potential receptors.

Source. #4966, eff 11-2-90; EXPIRED 11-2-96

New. #6371, INTERIM, eff 11-16-96, EXPIRES 3-16-97; ss
by #6386, eff 11-26-96

Env-Ws 412.09 Investigation Due to Discovery of Discharges from Unknown Sources. When a discharge from an unknown source is discovered, the owner of any facility where facility is defined in RSA 146-A:2, IX, and means "a location, including structures or land, at which oil is subjected to treatment, storage, processing, refining, pumping, transfer, or collection" near the location of the discovery shall conduct an initial site characterization in accordance with Env-Ws 412.08.

Source. #4966, eff 11-2-90; EXPIRED 11-2-96

New. #6371, INTERIM, eff 11-16-96, EXPIRES 3-16-97; ss
by #6386, eff 11-26-96

Env-Ws 412.10 Site Investigation.

(a) Upon completion of an initial site characterization, responsible party(ies) shall investigate the discharge, the discharge site, and the off-site surrounding area possibly affected by the discharge unless the initial site characterization establishes that:

- (1) No free product is present;
- (2) No contaminated soils are present; and
- (3) There is no present or potential groundwater or surface water impact from the discharge.

(b) The site investigation shall determine the location and full extent of contamination and identify receptors and potential receptors.

(c) A recoverable bench mark shall be established at the site and if a USGS bench mark is within 1,000 feet of the site, elevations at the site shall be recorded using national Geodetic Vertical Datum (NGVD).

(d) Responsible party(ies) shall submit a site investigation report in accordance with Env-Ws 410.22 to the department within 120 days of notification by the department that the criteria of Env-Ws 412.10(a)(1-3) have not been met.

(e) The responsible party(ies) shall implement abatement measures in accordance with Env-Ws 412.06.

Source. #4966, eff 11-2-90; EXPIRED 11-2-96

New. #6371, INTERIM, eff 11-16-96, EXPIRES 3-16-97; ss
by #6386, eff 11-26-96

Env-Ws 412.11 Remedial Action Plan.

(a) Unless the site meets the site closure criteria of Env-Ws 412.19, Responsible parties required to conduct a site investigation under Env-Ws 412.10 shall submit a remedial action plan for responding to and remediating contamination. The remedial action plan shall be submitted to the department within 120 days following department approval of the site investigation report. The remedial action plan shall be prepared in accordance with the requirements of Env-Ws 410.23 (d).

(b) The plan shall provide for protection of human health and the environment, and recommended action to:

- (1) Remove, treat or contain the contamination source to prevent the additional release of contaminants to groundwater and to eliminate the health hazard associated with direct exposure to the contaminant source;
- (2) Contain and confine contaminated groundwater within the limits of a proposed groundwater management zone, delineated in accordance with the procedures of Env-Ws 410.26;
- (3) Restore groundwater quality to meet the quality criteria of Env-Ws 410.03; and
- (4) Restore the soil quality to meet the soil cleanup standards of Env-Ws 412.13.

(c) The department shall approve the plan, upon determining that the plan meets all of the following remedial action plan criteria:

- (1) Human health and the environment shall be protected;
- (2) Groundwater quality criteria specified in Env-Ws 410.03 shall be met;
- (3) Sources of contamination shall be controlled so as to reduce or eliminate further releases of regulated contaminants to groundwater;
- (4) Contaminated soil shall be removed, treated or contained to reduce the health risk associated with the direct exposure via dermal contact, ingestion and inhalation to the contaminant soil;
- (5) The existing risk shall be reduced to the greatest extent practicable, balancing costs and benefits by evaluating the risk to public health and the environment by the methods described in the American Society for Testing and Materials Standard E 1730-95 entitled "Guide for Risk-Based Corrective Action Applied to Petroleum Release Sites" dated November, 1995;
- (6) Future risks of additional releases shall be reduced to the greatest extent practicable, balancing costs and benefits;
- (7) Long-term management, including operation and maintenance of the remediation equipment or facility and site monitoring requirements, shall be minimized;
- (8) Potential need for modification of the remedy shall be minimized;

(9) Resource value of groundwater impacted by the contamination, including current and anticipated future land use, shall be protected; and

(10) The responsible party shall have the financial ability to implement the remedy.

(d) Upon approval of the remedial action plan by the department, the responsible party(ies) shall implement the plan.

(e) The responsible party(ies) shall report the results of implementing the plan, including an evaluation of the effectiveness of the remediation, to the department in writing.

(f) Responsible party(ies) may, in the interest of minimizing contamination and promoting more effective remediation, begin remediation of soil, groundwater and surface water before the remedial action plan is approved by the department, provided they:

(1) Notify the department in writing of their intent to begin remediation;

(2) Incorporate these self-initiated remediation measures into the plan that is submitted to the department for approval; and

(3) Comply with the requirements of all applicable local, state, and federal rules and statutes.

Source. #4966, eff 11-2-90; EXPIRED 11-2-96

New. #6371, INTERIM, eff 11-16-96, EXPIRES 3-16-97; ss by #6386, eff 11-26-96

Env-Ws 412.12 Public Notification.

(a) Responsible party(ies) shall provide public notification in accordance with Env-Ws 410.20.

(b) If public notification is not made by the responsible party(ies), the department shall do so and all costs of public notification shall be paid by the responsible party(ies).

Source. #4966, eff 11-2-90; EXPIRED 11-2-96

New. #6371, INTERIM, eff 11-16-96, EXPIRES 3-16-97; ss by #6386, eff 11-26-96

Env-Ws 412.13 Soil Cleanup Standards.

(a) Unless site-specific soil cleanup standards are developed in accordance with (c) below, generic soil cleanup standards shall apply to all petroleum contaminated soil which results from human operations or activities and which are located in non-enclosed areas.

(b) Generic soil cleanup standards shall be as set forth in Table 412-1 below:

Table 412-1
Generic Soil Cleanup Standards

| Regulated Contaminant | Standard |
|---|------------|
| Acenaphthene | 1,000 ppm |
| Acenaphthylene | 1,000 ppm |
| Anthracene | 1,000 ppm |
| Benzene | 0.3 ppm |
| Benzo(a)anthracene | 0.7 ppm |
| Benzo(a)pyrene | 0.7 ppm |
| Benzo(b)fluoranthene | 7 ppm |
| Benzo(k)fluoranthene | 7 ppm |
| Chrysene | 70 ppm |
| Dibenzo(a,h)anthracene | 0.7 ppm |
| Dichloroethane, 1,2- | 0.09 ppm |
| Ethylbenzene | 90 ppm |
| Fluoranthene | 810 ppm |
| Fluorene | 510 ppm |
| Indeno(1,2,3-cd)pyrene | 0.7 ppm |
| Isopropylbenzene | 23 ppm |
| Methylnaphthalene, 2- | 150 ppm |
| Methyl tertiary-butyl ether (MtBE) | 0.13 ppm |
| Naphthalene | 3 ppm |
| Toluene | 100 ppm |
| Xylene | 810 ppm |
| Alkylbenzenes | |
| Butylbenzene, n- | |
| Butyl benzene, sec- | Total |
| Butyl benzene, tert- | |
| Isopropyl toluene, 4- | 61 ppm |
| Propylbenzene, n- | |
| Trimethylbenzene, 1,2,4- | |
| Trimethylbenzene, 1,3,5- | |
| Non-Carcinogenic PAH | |
| Group | |
| Pyrene, | Total |
| Benzo (g,h,i) Perylene and Phenanthrene | 610 ppm |
| Total Petroleum Hydrocarbons | 10,000 ppm |

(c) In lieu of standards in Table 412-1, the owner may develop site-specific soil cleanup standards by evaluating the risk to public health and the environment by the methods described in the American Society for

Testing and Materials Standard E 1730-95 entitled "Guide for Risk-Based Corrective Action Applied to Petroleum Release Sites" dated November, 1995.

(d) Each site-specific evaluation shall:

- (1) Demonstrate that leaching of contaminants to groundwater will not result in violations of ambient groundwater quality standards as specified in Env-Ws 410.05; and
- (2) Demonstrate that no significant risk to human health, public safety and the environment exists at the site.

(e) In the evaluation of human health, a cumulative risk approach shall be used which compares site-specific information to a cumulative risk of an excess lifetime cancer risk of one in 100,000 and a cumulative non-cancer risk which is a hazard index equal to one.

Source. #4966, eff 11-2-90; EXPIRED 11-2-96

New. #6371, INTERIM, eff 11-16-96, EXPIRES 3-16-97; ss by #6386, eff 11-26-96; amd by #7261, eff 5-4-00

Env-Ws 412.14 Soil Destined for Off-Site Treatment.

(a) Samples from stockpiled soils destined for off-site treatment shall be collected in accordance with Table 412-2 below.

Table 412-2
Number of Composite Samples Required
for
Stockpiled Soil Destined for Off-Site Treatment

| Amount of Soil (in Tons) | Number of Composite Samples |
|----------------------------|---|
| less than or equal to 4000 | one for every 200 tons |
| greater than 4000 | 20 plus one additional for every 500 tons above initial 4000 tons |

(b) There shall be 8 core samples for each composite. At each core sample location, the first 12 inches of soil shall be removed. The core samples shall be taken from newly exposed soil and combined with the other required core samples.

(c) In-situ sampling of contaminated soil prior to excavation for soil destined for off-site treatment shall be performed in accordance with the following procedure:

- (1) The minimum number of composite samples for in-situ soil sampling shall be determined by estimating the tonnage of contaminated soil and applying Table 412-2 above;
- (2) The number of borings or test pits shall be equal to the number of required composite samples.
- (3) The total area to be excavated shall be divided into equal sections by the number of required borings/test pits.
- (4) Each boring or test pit shall be located as near as possible to the center of each section;

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- (5) At least one boring/test pit shall be located in the most contaminated soil area;
- (6) Composite samples from soil borings shall be comprised of core samples collected at no greater than 2-foot intervals from the contaminated soil column until contamination is no longer indicated by field observations and field screening methods or the approximate limits of the excavation have been attained;
- (7) Contaminated soil from each test pit shall be temporarily stockpiled; and
- (8) Composite samples shall be collected in accordance with Table 412-2 above.

(d) Unless certified as virgin petroleum contaminated soil in accordance with Env-Ws 412.17, the composite soil samples required in (a), (b), and (c) above shall be analyzed in accordance with Table 412-3 below:

Table 412-3
Testing Requirements for Soils
Destined for Off-site Treatment

| Analysis Required | Analytical Method | Acceptable Limits |
|---------------------------------|--|--|
| Ignitability | Ignitability Characteristic for Soil Samples (NHDES method) | Pass |
| Corrosivity | EPA method 9045 | between 2 and 12.5 units |
| Reactive Sulfide | SW 846 7.3.4.1 | Hazardous Waste Rules Env-Wm 403.05(b)(5) |
| Reactive Cyanide | SW 846 7.3.3.2 | Hazardous Waste Rules Env-Ws 403.05(b)(5) |
| Volatile Organic Compounds | EPA methods 8240 or 8260 | Hazardous Waste Rules Env-Ws 404 |
| Semi-volatile Organic Compounds | EPA methods 8270 or 8310 | Hazardous Waste Rules Env-Ws 404 |
| Polychlorinated Biphenyls | EPA method 8080 | less than 2 ppm |
| Total Petroleum Hydrocarbons | Total Petroleum Hydrocarbon Analysis (NHDES method) | Receiving facility limits |
| Arsenic | Preparation: EPA methods 1310 or 1311 Analysis: EPA methods 7060 or 6010 | 5 ppm |
| Barium | Preparation: EPA methods 1310 or 1311 Analysis: EPA Methods 7080 or 6010 | 100 ppm |
| Cadmium | Preparation: EPA methods 1310 or 1311 Analysis: EPA methods 7130 or 6010 | 1 ppm |
| Chromium | Preparation: EPA methods 1310 or 1311 Analysis: EPA Methods 7190 or 6010 | 5 ppm |
| Lead | Preparation: EPA methods 1310 or 1311 Analysis: EPA methods 7420 or 6010 | 5 ppm |
| Mercury | Preparation: EPA methods 1310 or 1311 Analysis: EPA Methods 7470 Cold Vapor | 0.2 ppm |
| Selenium | Preparation: EPA methods 1310 or 1311 Analysis: EPA methods 7740 or 6010 | 1 ppm |

| | | |
|--------------|---|----------|
| Silver | Preparation: EPA methods 1310 or 1311 Analysis: EPA Methods 7760 or 6010 | 5 ppm |
| Endrin | EPA method 8080 | 0.02 ppm |
| Lindane | EPA method 8080 | 0.4 ppm |
| Methoxychlor | EPA method 8080 | 10 ppm |
| Toxophene | EPA method 8080 | 0.5 ppm |
| 2,4-D | EPA method 8150 | 10 ppm |
| 1,4,5-TP | EPA method 8080 | 0.1 ppm |

(e) If the contaminated soils are certified as virgin petroleum contaminated soil in accordance with Env-Ws 412.18, composite soil samples required in (a), (b), and (c) above shall be analyzed for ignitability, volatile organic compounds and total petroleum hydrocarbons. If the contaminated soil quantities are less than 50 tons, sampling and analysis shall not be required.

(f) Soils which meet the acceptable limits listed in Table 412-3 may be treated at petroleum contaminated soil treatment facilities that are in compliance with all applicable federal, state and local regulations.

(g) Soils which do not meet the acceptable limits listed in Table 412-3 shall be managed in accordance with the hazardous waste rules, Env-Wm 100-1000.

Source. #4966, eff 11-2-90; EXPIRED 11-2-96

New. #6371, INTERIM, eff 11-16-96, EXPIRES 3-16-97; ss by #6386, eff 11-26-96

Env-Ws 412.15 Soil Disposal and Reuse.

(a) Soils which meet the soil cleanup standards of Env-Ws 412.14 may be left in place or reused on site.

(b) Soils which fail the generic soil cleanup standards but meet site-specific soil cleanup standards for direct exposure to the contaminated soil may be left in place or reused on site provided:

- (1) The contaminated soil is located at least 2 feet below the surface of the ground or completely covered by at least 3 inches of pavement; and
- (2) The responsible party records notice of the location and the level of contamination in the registry of deeds in the chain of title of the lot on which the contamination is located, and which indicates that any excavation, exposure and disposal of the contaminated material shall meet all requirements of the department.

(c) Soils which meet the soil cleanup standards of Env-Ws 412.14 may be disposed of or reused off-site at a solid waste disposal facility that is in compliance with all applicable federal, state and local regulations.

Source. #6386, eff 11-26-96

Env-Ws 412.16 Soil Certification. Contaminated soils destined for off-site treatment shall be exempt from the testing requirement of Table 412-3 if the soil is certified as virgin petroleum contaminated soil in accordance with the following procedure:

(a) The site owner shall complete a summary of site ownership history and history of use and certify his/her knowledge that the soil is contaminated with only virgin petroleum products;

(b) Department staff or the owner's environmental consultant shall observe the site and the soil to be certified and shall review the site history. If the site history reveals no known activity during the past 30 years which might cause the soil to be a hazardous waste, as specified in Env-Ws 100-1000, and all other certification requirements of this section are met, the soil shall be certified as virgin petroleum contaminated soil.

(c) Contaminated soil which is not generated from households or from underground storage facilities regulated under RSA 146-C shall be analyzed for the hazardous waste toxicity characteristic. One composite sample shall be collected in accordance with the number of core samples per composite specified in Table 412-4 below.

(d) The sample required pursuant to (c) above shall be analyzed in accordance with the following procedure:

(1) The sample shall be analyzed for volatile organic compounds using EPA method 8240 or 8260; and

(2) If the concentrations of benzene and 1,2 dichloroethane do not exceed 10 ppm and all other certification requirements of this section are met, the soil shall be certified as virgin petroleum contaminated soil; or

(3) The leachate from the toxicity characteristic leaching procedure extraction methodology, EPA method 1311, shall be analyzed for volatile organic compounds using EPA method 8240 or 8260; and

(4) If the concentration of benzene and 1,2 dichloroethane do not exceed 0.5 ppm and all other certification requirements of this section are met, the soil shall be certified as virgin petroleum contaminated soil.

(e) If the site history shows activities during the past 30 years which might have caused the soil to become contaminated with hazardous waste or listed hazardous constituents, one composite sample shall be collected in accordance with the number of core samples per composite specified in Table 412-4 below. The sample shall be analyzed in accordance with the analytical methods listed in Table 412-3 for the hazardous waste characteristics and constituents which may be present as indicated by the site history. If the concentration of contaminants do not exceed the acceptable limits in Table 412-3 and all other certification requirements of this section are met, the soil shall be certified as virgin petroleum contaminated soil.

Table 412-4
Number of Core Samples Required in Composite Sample
for
Certification of Petroleum Contaminated Soils

| Amount of Soil (in Tons) | Number of Core Samples in Composite Sample |
|-----------------------------|---|
| Less than 10 | 2 |
| 11-50 | 5 |
| 51-100 | 8 |
| 101-200 | 8 |
| 201-300 | 8 |
| 301-400 | 10 |
| 401-500 | 12 |
| 501-600 | 14 |
| 601-700 | 16 |
| 701-800 | 18 |
| 801-900 | 20 |
| 901-1000 | 22 |
| 1001-2000 | 36 |
| 2001-4000 | 64 |
| 4001-8000 | 120 |
| 8001-16000 | 232 |

Source. #6386, eff 11-26-96

Env-Ws 412.17 Soil Storage.

(a) Contaminated soil destined for off-site treatment or disposal may be temporarily stored at the site of origin for a period not to exceed 4 months. Sites other than the site of origin may be used for the 4 month temporary storage if the responsible party(ies) receives prior written approval from the department.

(b) Department approval shall be granted if the following conditions are met;

(1) The responsible party received written approval from the local authorities.

(2) The responsible party received written approval from the owner of the property that will receive the contaminated soil.

(c) Contaminated soil shall be stored on a petroleum-impermeable liner. An impervious cover shall completely and securely cover the stockpiled soil in order to minimize fugitive volatile organic compounds and dust emissions and leaching effects of precipitation. Fluids from saturated soils shall be contained with sorbent booms or earthen dikes.

(d) The soil pile shall only be uncovered when contaminated soil is being added to or withdrawn from the pile.

(e) Fencing to restrict public access to the storage area shall be required when any of the following soil concentrations are exceeded:

(1) For benzene, 165 ppm;

(2) For toluene, 8,300 ppm;

- (3) For ethylbenzene, 2,750 ppm; and
- (4) For xylene, 55,000 ppm.

Source. #6386, eff 11-26-96

Env-Ws 412.18 Site Closure Criteria. Additional investigation, remedial measures or groundwater monitoring shall not be required by the department if:

- (a) Health hazards associated with direct exposure via inhalation, ingestion and dermal contact to contaminants have been eliminated;
- (b) Sources of groundwater contamination have been eliminated;
- (c) On-site and off-site dissolved contamination levels are below ambient groundwater quality standards as specified in Env-Ws 410.05; and
- (d) The strict liability requirements for the cost of containment, cleanup and removal under RSA 146-A:3-a have been met.

Source. #6386, eff 11-26-96

Env-Ws 412.19 Waivers.

(a) The rules contained in Env-Ws 412 are intended to apply to a variety of conditions and circumstances. It is recognized that strict compliance with all rules prescribed herein may not fit every conceivable situation. Responsible party(ies) may request a waiver of specific rules contained in Env-Ws 412 in accordance with (b) below.

(b) All requests for waivers shall be submitted in writing to the department and shall include the following information:

- (1) A description of the facility or site to which the waiver request relates, including name, address, and the department site number;
- (2) A specific citation of the rule for which a waiver is being sought;
- (3) A full explanation of why a waiver is necessary and demonstration of hardship caused if the rule is adhered to;
- (4) A full explanation of the alternative(s) to the rule(s) for which a waiver is sought, with backup data for support; and
- (5) A full explanation of how the alternative(s) shall be consistent with the intent of RSA 146-A, and would adequately protect human health and the environment.

(c) The department shall approve a request for a waiver upon finding that the alternatives proposed are at least equivalent to the requirements contained in this rule, are adequate to ensure that the provisions of RSA 146-A are met, and human health and the environment shall be protected.

(d) No waiver shall be granted which, in the judgment of the department, contravenes the intent of any rule.

(e) The department shall issue a written response to a request for a waiver within 60 days of receipt of the request.

Source. #6386, eff 11-26-96

PARTS Env-Ws 413 through Env-Ws 414 - RESERVED

PART Env-Ws 415 PERMITS FOR RSA 485-A:17 ACTIVITIES

Statutory Authority: RSA 485-A:6, VIII; RSA 485-A:17

Env-Ws 415.01 Purpose.

(a) The purpose of these rules is to protect surface water quality from degradation resulting from any activity which significantly alters the terrain or occurs in or on the border of the surface waters of the state. Examples of these activities include dredging, earth moving, excavating, timber harvesting operations and mining.

(b) The intent of these rules is to identify those activities for which a permit is required pursuant to RSA 485-A:17 and to delineate the procedures by which the permit shall be issued and enforced. Some of the terminology contained in the law is expanded upon for reasons of clarity with intent being to formulate a workable permit program.

Source. #1751, eff 5-4-81; ss by #2670, eff 4-12-84;
EXPIRED 4-12-90

New. #4833, eff 6-4-90; ss by #6261, INTERIM, eff 6-1-96,
EXPIRED 9-29-96

New. #6346, eff 10-1-96

Env-Ws 415.02 Part Definitions. As used herein, the following terms, unless the context clearly indicates otherwise, shall have the following meanings:

(a) "Afterbay" means a pool at the outlet end of a constructed wetland which provides for additional settling of solids and sufficient depth for the outlet pipe.

(b) "Appropriate Best Management Practices" as used in Env-Ws 415.04 means those contained in the manual "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire" prepared by the New Hampshire department of resources and economic development.

(c) "Borrow area" means an area where soil material is removed to be used in other areas for construction purposes.

(d) "Constructed wetland" means an engineered system designed to simulate the water quality improvement functions of natural wetlands.

(e) "Division" means the water supply and pollution control division of the department of environmental services.

(f) "Earth moving" means filling, grading, dredging, mining, excavation, construction, removal of topsoil or any other activity that results in a change to the preexisting ground conditions.

(g) "Extended detention pond" means a detention structure designed to hold storm water for at least 24 hours.

(h) "Fill" means any rock, soil, gravel, sand, or other such material that has been deposited or caused to be deposited by human activity.

(i) "General permit" means a permit issued by the division pursuant to RSA 485-A:17 in conjunction with a permit issued pursuant to RSA 482-A.

(j) "Grassed swale" means a shallow, vegetated, manmade ditch designed to provide treatment of stormwater runoff from urban surfaces.

(k) "In or on the border of a surface water of the state" means within the high water mark of any surface water, or on any land within such a distance of a surface water that direct or immediate water quality degradation may result from the activities occurring on the land.

(l) "Infiltration basin" means an open basin to which the runoff is discharged and which contains the water while it percolates through the sides and bottom of the basin.

(m) "Infiltration trench" means a subsurface trench filled with stone to which runoff is either piped directly or flows overland, from which it is percolates into the surrounding soil.

(n) "Land surface" means the exposed surface of any land areas including road surfaces, parking lots, air strips, shopping centers, roofs, and any other surface, whether in a natural or developed state, over which runoff flows.

(o) "Logger" means any owner or other person responsible for filing an Intent to Cut form, as required by the department of revenue administration, or otherwise responsible for timber harvesting operations.

(p) "Runoff" means any water on or flowing on or across the land surface.

(q) "Sediment forebay" means a pool at the inlet end of a constructed wetlands which provides for initial settling of solids and even distribution of flow over the wetland.

(r) "Site specific permit" means a permit issued by the division pursuant to RSA 485-A:17 to meet the requirements of Env-Ws 415.03(b).

(s) "Slope" means the incline of a land area, shall be expressed as ratio of the horizontal distance to vertical distance.

(t) "Surface waters of the state" means surface waters of the state as defined in RSA 485-A:2 XIV and includes all waters regulated under RSA 482-A.

(u) "Timber harvesting operations" means the cutting and removal of forest products; the construction of bridges, fords, culverts, roads and landings; skidding, and other similar activities which have the potential to result in a significant alteration of the characteristics of the terrain. Timber harvesting operations shall not include removal of timber or cordwood or other forest products for noncommercial personal use.

(v) "To dredge" means to make a body of water such as a lake, river, channel, harbor, or other area of surface water wider, deeper, or cleaner by the removal of sand, silt, mud, rock, or other such material.

(w) "To excavate" means to dig out and remove, to form a cavity or to form a hole in any land area.

(x) "To mine" means to excavate by dredging, blasting, or any other means which significantly alters the terrain or occurs in or on the borders of the surface waters of the state.

(y) "To significantly alter the characteristics of the terrain" means to undertake any activity anywhere in the state that changes or disturbs the terrain so as to impede the natural runoff or create an unnatural runoff that has the potential to adversely affect water quality in the state's surface waters. Examples of activities which significantly alter the characteristics of the terrain include, but are not limited to earth moving activities which result in a disturbance of more than 100,000 square feet of contiguous area or 50,000 square feet or more of contiguous area if within the protected shoreland as defined in RSA 483-B, and timber harvesting operations.

(z) "To transport forest products" means to move or convey timber and related products within an area bounded by permanent roadways.

(aa) "To undertake construction" means to perform any fabrication of any structure or any appurtenance to a structure, land clearing, earth work, or any activity preliminary to fabricating such structure or appurtenance which involves a significant alteration of the characteristics of the terrain or which occurs in or on the border of the surface waters of the state.

(bb) "Vegetated filter strip" means an area of land with natural or planted vegetation designed to receive sheet runoff from up-gradient development.

(cc) "Water quality inlet" means an underground, multi-chambered tank designed to remove sediments from and reduce the amount of floatable solids in runoff, and includes oil and grit separators.

(dd) "Wet pond" means an area designed to contain a permanent pool of water, which prevents the resuspension of sediments in the pond from previous storm events, by slowing and disbursing incoming flow.

Source. #1751, eff 5-4-81; ss by #2670, eff 4-12-84;
EXPIRED 4-12-90

New. #4833, eff 6-4-90; ss by #6261, INTERIM, eff 6-1-96,
EXPIRED 9-29-96

New. #6346, eff 10-1-96

Env-Ws 415.03 Permit Required. A permit shall be obtained from the division prior to commencing any of the following activities:

(a) Any project involving dredging, excavation, filling, mining, transporting of forest products, construction, earth moving or other significant alteration of the characteristics of the terrain as defined in Env-Ws 415.02 that will occur in or on the border of the surface waters of the state;

(b) Construction, earth moving or other significant alteration of the characteristics of the terrain as defined Env-Ws 415.02 when a contiguous area of 50,000 square feet or more if within the protected shoreline as defined by RSA 483-B or 100,000 square feet or more in all other areas will be disturbed; or

Source. #1751, eff 5-4-81; amd by #1964, eff 4-1-82; ss by #2670, eff 4-12-84; EXPIRED 4-12-90

New. #4833, eff 6-4-90; ss by #6261, INTERIM, eff 6-1-96, EXPIRED 9-29-96

New. #6346, eff 10-1-96

Env-Ws 415.04 Timber Harvesting Operations. In the instance of timber harvesting operations, each logger shall obtain a site specific permit by signing the following statement as it appears on the "Intent to Cut" form of the department of revenue administration:

"I, _____, having become familiar with RSA 485-A:17, RSA 224:44a, 224:44b, 482-A and related rules, hereby agree to abide by appropriate Best Management Practices to include all state laws pertaining to logging operations."

Source. #1751, eff 5-4-81; ss by #2670, eff 4-12-84; EXPIRED 4-12-90

New. #4833, eff 6-4-90; ss by #6261, INTERIM, eff 6-1-96, EXPIRED 9-29-96

New. #6346, eff 10-1-96

Env-Ws 415.05 Permit Application Procedures.

(a) Applications for permits shall be submitted to the division at the following address:

DES Water Supply & Pollution Control Division
29 Hazen Drive - P.O. Box 95
Concord, New Hampshire 03302-0095

(b) Application forms shall be available at the public information and permitting office of the department of environmental services. The division shall mail an application form, instructions and a copy of the applicable statute and rules to any person who so requests.

(c) An application for a permit, other than general permits shall include the following:

(1) One copy of the application form which shall include the following information:

- a. Applicant's name;
- b. Applicant's address
- c. Date of application;
- d. Brief description of project;
- e. Date of proposed activities;
- f. Identification of plan type required according to Env-Ws 415.08; and

(2) Two copies of plans as specified in Env-Ws 415.08 through Env-Ws 415.10 for the specific project.

(d) Pursuant to RSA 485-A:17,I, applications filed pursuant to these rules shall be filed at least 30 days prior to the proposed starting date of the proposed activities and no activities shall commence without prior approval of the application by the division.

(e) Upon receipt of an application the division shall send notice to affected municipalities in accordance with RSA 541-A:39

(f) The notice sent pursuant to (e) above shall specify the deadline for receipt of comments on the application from the municipality, which shall not be sooner than 14 days from the date the division receives the application.

Source. #1751, eff 5-4-81; ss by #2670, eff 4-12-84;
EXPIRED 4-12-90

New. #4833, eff 6-4-90; ss by #6261, INTERIM, eff 6-1-96,
EXPIRED 9-29-96

New. #6346, eff 10-1-96

Env-Ws 415.06 Fees for Plan Review. Each application filed pursuant to these rules shall be accompanied by the fee required by RSA 485-A:17,II as determined pursuant to Env-Ws 415.14.

Source. #1751, eff 5-4-81; amd by #1964, eff 4-1-82; ss by
#2670, eff 4-12-84; EXPIRED 4-12-90

New. #4833, eff 6-4-90; ss by #6261, INTERIM, eff 6-1-96,
EXPIRED 9-29-96

New. #6346, eff 10-1-96

Env-Ws 415.07 Criteria for Review. Each permit application, except general permit applications, shall be reviewed for the following:

(a) Water quality protection measures proposed to be used during the construction phase of the proposed activity for the prevention of soil erosion;

(b) Permanent water quality protection measures to be constructed as part of the project in accordance with Env-Ws 415.11; and

(c) Impacts due to changes in runoff hydrology, determined in accordance with Env-Ws 415.11(m).

Source. #1751, eff 5-4-81; ss by #2670, eff 4-12-84;
EXPIRED 4-12-90

New. #4833, eff 6-4-90; ss by #6261, INTERIM, eff 6-1-96,
EXPIRED 9-29-96

New. #6346, eff 10-1-96

Env-Ws 415.08 Types of Plans Required.

(a) A site plan shall be submitted for projects involving only excavation activities.

(b) A detailed development plan shall be submitted for all projects requiring a site specific application other than those covered by section (a) of this part. Detailed development plans shall be prepared and stamped by a licensed professional engineer.

Source. #1751, eff 5-4-81; ss by #2670, eff 4-12-84;
EXPIRED 4-12-90

New. #4833, eff 6-4-90; ss by #6261, INTERIM, eff 6-1-96,
EXPIRED 9-29-96

New. #6346, eff 10-1-96

Env-Ws 415.09 Details of Site Plans. Each site plan shall include:

(a) United States Geological Survey Sheet(s), either machine copy or other facsimile, showing exact location(s) of projects for which a permit is being requested;

(b) A plan to scale showing the direction of water flow, maximum high-water mark and usual shorelines, natural features, adjacent roads, and structures in relation to all abutters, at a scale appropriate for clarity;

(c) Appropriate maps to scale of the area of activity and any abutting or nearby properties the drainage from which might impact the drainage characteristics of the area, at a scale of one inch = 100 feet or less, as required, to present the required detail;

(d) All contours at 5 foot intervals or less for site as existing, and following the proposed activity;

(e) Site limits, streets, roadways, parking areas, waterways, structures and drainage features of abutters that may impact the site;

(f) Soil types;

(g) Location of existing vegetative cover, and location of wetland or wet areas;

(h) A clear delineation of the total area to be disturbed, including proposed improvements or modifications;

(i) Temporary and permanent methods of preventing soil erosion;

(j) Construction phasing and sequencing, including methods for limiting the length of time of exposure of unstabilized soils;

(k) Proposed temporary and permanent runoff controls;

(l) Proposed permanent methods for protecting water quality from degradation due to runoff; and

(m) A list of other permits required by the department of environmental services for the project and the status of each permit or permit application.

Source. #1751, eff 5-4-81; ss by #2670, eff 4-12-84;
EXPIRED 4-12-90

New. #4833, eff 6-4-90; ss by #6261, INTERIM, eff 6-1-96,
EXPIRED 9-29-96

New. #6346, eff 10-1-96

Env-Ws 415.10 Details of Development Plans. Each detailed development plan shall include:

(a) All information required for site plans, with the exception that the plan scale shall be one inch = 50 feet or less and the contour interval shall be 2 feet;

(b) Devices and timing of implementation for erosion, sediment and runoff control;

(c) Detailed pre - and post-development drainage and grading plans; and

(d) Proposed permanent methods for protecting water quality from degradation due to runoff from paved surfaces, roofs, roadways, parking lots, commercial/industrial areas and other developed surfaces.

Source. #1751, eff 5-4-81; ss by #2670, eff 4-12-84;
EXPIRED 4-12-90

New. #4833, eff 6-4-90; ss by #6261, INTERIM, eff 6-1-96,
EXPIRED 9-29-96

New. #6346, eff 10-1-96

Env-Ws 415.11 Permanent Methods for Protecting Water Quality.

(a) For vegetated filter strips:

(1) Filter strip shall be well vegetated;

(2) Filter strip shall not be managed as a lawn;

(3) The filter strip shall directly abut the impervious area or a level spreader shall be constructed at the top of the strip to distribute the flow;

(4) The rate of flow to the filter strip shall not exceed 0.5 cubic feet per second per foot of filter strip width, during a design storm with a minimum return frequency of once in two years;

(5) Filter strip slope shall not exceed 15 percent; and

(6) The minimum width of the filter strip shall be 75 feet.

(b) For grassed swales:

(1) Minimum length shall be 100 feet;

(2) Swale side slopes shall be no-steeper than 3:1;

- (3) Maximum water velocity during a design storm with a return frequency of once in 10 years, shall be one foot per second;
 - (4) Maximum flow during a design storm with a minimum return frequency of once in ten years shall be 10 cubic feet per second;
 - (5) Swale shall be vegetated with a dense cover of water tolerant, erosion resistant grasses; and
 - (6) The bottom of the swale shall be at least two feet above the seasonal high water table and bedrock.
- (c) For extended detention ponds:
- (1) A minimum of 24 hours of extended detention shall be provided for a design storm with a minimum return frequency of once in two years;
 - (2) Smaller runoff events shall be detained in the pond for at least six hours. Longer detention periods shall be provided if needed for streambank erosion control;
 - (3) The pond shall be designed with a drawdown time of 24 to 40 hours;
 - (4) A 2 stage pond design shall be used, as follows:
 - a. The upper stage shall be dry except during larger storm events, and the lower stage shall be sized to be regularly inundated; and
 - b. The lower stage shall be designed to handle 50 to 90 percent of the design storm;
 - (5) A stone lined pilot channel shall be constructed from the inlet to the lower stage;
 - (6) The pond shall be wedge shaped with the inlet at the narrow end;
 - (7) The minimum length to width ratio of the pond shall be 3:1, with the inlet and outlet at opposite ends of the pond; and
 - (8) Side slopes of the pond shall be no steeper than 3:1 and no flatter than 20:1.
- (d) For wet ponds:
- (1) Wet ponds shall have an average depth of 3 to 10 feet in the permanent pool;
 - (2) The maximum depth shall be no greater than 15 feet;
 - (3) The permanent pool shall be designed to hold the volume of runoff generated by a design storm with a minimum return frequency of once in two years over the entire contributing watershed area;
 - (4) Sediment storage shall be provided in the permanent pool;
 - (5) At least one foot of ice cover shall be provided for;
 - (6) The pond shall be wedged shaped with the narrow end at the inlet and the permanent pool at the outlet end;
 - (7) The minimum length to width ratio shall be 3:1, with the inlet and outlet at opposite ends of the pond;

- (8) Ponds shall have side slopes no steeper than 3:1 nor flatter than 20:1; and
 - (9) A hydrologic budget shall be prepared demonstrating that sufficient water is available to maintain the water depth in the permanent pool.
- (e) For constructed wetlands:
- (1) The volume of storage capacity below the outlet shall be equal to a one inch rainfall over the tributary area;
 - (2) Surface area of the wetland shall be a minimum of 2% of the watershed area;
 - (3) The wetland shall have 2 micropools comprising between 20 and 40% of the total wetland water volume, as follows:
 - a. The first micropool shall be a sediment forebay and shall contain 10 percent of the total wetland water volume;
 - b. The second micropool shall be an afterbay and shall contain 10 to 30 percent of the total wetland water volume; and
 - c. The micropools shall be a minimum of 3 feet and a maximum of 6 feet deep.
 - (4) The wetland between the two micropools shall be a marsh with variable depth between 6 inches and 2 feet;
 - (5) The outlet of the sediment forebay to the marsh shall be designed to evenly distributed the flow over the marsh;
 - (6) The length of the basin shall be at least twice the width, or other means provided to prevent short circuiting of flow;
 - (7) A hydrologic budget shall be prepared that demonstrates that sufficient water is available to maintain the wetland, and that the wetland will not be inundated with an excess of water;
 - (8) The marsh portion of the wetland shall be designed with a dense, well distributed stand of vegetation such as cattails;
 - (9) Maximum sideslopes shall be 3:1; and
 - (10) The constructed wetlands shall have a freeboard of at least one foot.
- (f) For infiltration trenches:
- (1) Stone reservoir depth shall be from 2 to 10 feet. A trench with a grassed surface shall consist of at least one foot of soil above the stone reservoir;
 - (2) The maximum storage time, or the time to drain, shall be 72 hours;
 - (3) The depth to seasonal high water table and bedrock shall be at least 4 feet below the bottom of the trench;
 - (4) The backfill material shall consist of a clean aggregate material with a maximum size of 2 inches and a minimum size of 3/4 inches, which shall be completely surrounded with geotextile fabric.

- (5) An observation well shall be installed in every infiltration trench;
 - (6) Infiltration trenches shall not be used at industrial facilities or at petroleum storage and/or dispensing sites, unless a source control program is developed and implemented, pursuant to RSA 485-C; and
 - (7) Infiltration trenches shall be designed for a storm with a minimum return frequency of once in two years.
- (g) For infiltration basins:
- (1) The floor of the basin shall be level;
 - (2) Side-slopes shall have a maximum slope of 3:1;
 - (3) The basin shall have sediment forebay or riprap apron;
 - (4) The maximum storage time, or the time to drain, shall be 72 hours;
 - (5) The depth to seasonal high water table and bedrock shall be at least 4 feet below the bottom of the basin;
 - (6) Infiltration basins shall not be used at industrial facilities and at petroleum storage and/or dispensing sites, unless a source control program is developed and implemented, pursuant to RSA 485-C; and
 - (7) Infiltration basins shall be designed for storm with a minimum return frequency of once in two years.
- (h) For water quality inlets:
- (1) Water quality inlets shall be a 3-chamber design with the first and second chambers having a combined volume equal to 400 cubic feet per contributing impervious acre;
 - (2) Access to each chamber shall be provided by means of a separate manhole; and
 - (3) The walls separating the chambers shall be water tight and only allow passage of stormwater through the design ports or pipes.
- (i) Infiltration basins, infiltration trenches and water quality inlets shall only be used where other methods are not feasible.
- (j) Other permanent methods for protecting water quality shall be approved by the division provided the applicant can provide to the division analytical data from at least 3 sites with climatological characteristics similar to New Hampshire indicating the proposed method is equivalent to the methods found in Env-Ws 415.11(a) through Env-Ws 415.11(h).
- (k) Direct infiltration of stormwater shall not be used at industrial sites or at petroleum storage or dispensing sites within 500 feet of a well serving a community or non-community, non-transient public water supply as defined in RSA 485:1-a which produces a maximum daily volume of less than 57,600 gallons and 1000 feet from any such well which produces a maximum daily volume of 57,600 gallons or greater.
- (l) The methods, means and responsible party for maintaining the water quality protection measures shall be identified in the application.

(m) Stormwater drainage shall be calculated for pre- and post-- construction, for storms with minimum return frequencies of once in 2 years and of once in 10 years using the "Rational Method," Technical Release 20 (TR20) or Technical Release 55 (TR55), developed by the USDA-Natural Resources Conservation Service, for determining the rate of runoff, subject to the following:

(1) The time of concentration (Tc) shall be determined by methods developed or endorsed by the USDA-Natural Resources Conservation Service, except for the design of a closed drainage system conveying parking lot and roadway runoff, for which other methods for determining Tc shall be acceptable; and

(2) When the stormdrainage design requires the calculation of a stormwater volume such as in the design of detention/retention ponds, wet ponds, constructed wetlands, or infiltration devices the calculations shall be made by TR20 or TR55.

Source. #1751, eff 5-4-81; ss by #2670, eff 4-12-84;
EXPIRED 4-12-90

New. #4833, eff 6-4-90; ss by #6261, INTERIM, eff 6-1-96,
EXPIRED 9-29-96

New. #6346, eff 10-1-96

Env-Ws 415.12 Waivers for submittal of Information.

(a) In those instances where there exists a low potential for a water quality violation, the applicant may request that one or more of the information items required by Env-Ws 415.09 and Env-Ws 415.10 be waived.

(b) Such requests shall be submitted to the division in writing with the application and shall state the reason(s) why the information required by the section(s) is not necessary to a determination that the project will not cause surface water quality degradation.

(c) No waiver shall be granted unless the division determines that the information is not necessary to its determination that the project will not cause surface water quality degradation, based on the following criteria:

(1) Waiver of information will result in an easier to understand plan;

(2) Information to be waived does not add to the understanding of the project; and

(3) Information to be waived is technical in nature.

Source. #4833, eff 6-4-90; ss by #6261, INTERIM, eff 6-1-96, EXPIRED 9-29-96

New. #6346, eff 10-1-96

Env-Ws 415.13 Issuance of Permits.

(a) Upon determining that the items required by Env-Ws 415.05, Env-Ws 415.09 and Env-Ws 415.10 have been submitted, or waived under Env-Ws 415.12, and that the criteria specified in Env-Ws 415.07 have been met, the division shall issue a permit to the applicant.

(b) The approved plans and documentation contained in the permit file shall be considered part of the permit.

Source. #4833, eff 6-4-90; ss by #6261, INTERIM, eff 6-1-96, EXPIRED 9-29-96

New. #6346, eff 10-1-96

Env-Ws 415.14 Measurement of Contiguous Area Disturbed. The amount of contiguous area disturbed used to assess fees shall be determined as follows:

(a) For single family residence subdivisions in which roadway construction and lot development will not be carried out simultaneously, the amount of contiguous disturbed area shall be the width of the roadway right-of-way multiplied by the length of the roadway, plus all other areas disturbed at the time of roadway construction, such as grading, utility construction, pond construction or borrow areas.

(b) For all projects other than those covered in subsection (a), the amount of contiguous area disturbed shall be the proposed area of disturbance as outlined on the plans submitted for review. Any disturbance outside the area depicted on the plan shall be considered an unpermitted disturbance.

Source. #4833, eff 6-4-90; ss by #6261, INTERIM, eff 6-1-96, EXPIRED 9-29-96

New. #6346, eff 10-1-96

Env-Ws 415.15 General Permits.

(a) Any person proposing to undertake activities affecting an area of less than 100,000 square feet in or on the borders of surface waters of the state which area is under the jurisdiction of RSA 482-A shall apply for a permit pursuant to RSA 482-A and rules adopted pursuant thereto. Upon review and approval of the application, a joint or general permit shall be issued.

(b) General permits shall be effective for the life of the project, but in no event for more than 2 years.

Source. #4833, eff 6-4-90; ss by #6261, INTERIM, eff 6-1-96, EXPIRED 9-29-96

New. #6346, eff 10-1-96

Env-Ws 415.16 Permit Suspension or Revocation. Upon finding that information submitted as part of a permit application for which a permit has been issued is incorrect, misleading, incomplete or otherwise deficient, the division shall take the following action:

(a) If the division determines that the deficient information was submitted inadvertently or negligently, the division shall suspend the permit and allow the permit holder a reasonable time in which to submit adequate and correct information, and shall notify the permit holder that if the information is not submitted within the time specified, the permit shall be revoked. A decision to suspend a permit shall not be considered a final decision from which an appeal may be taken.

(b) If the division determines that the deficient information was submitted with the intention to mislead or to avoid one or more requirements of the statute or rules, or if the permit holder does not submit the information required under subsection (a) for a suspended permit within the time specified, the division shall revoke the permit.

Source. #4833, eff 6-4-90; ss by #6261, INTERIM, eff 6-1-96, EXPIRED 9-29-96

New. #6346, eff 10-1-96

Env-Ws 415.17 Appeal Procedure. Any person aggrieved by a final decision of the division made pursuant to these rules may appeal the decision pursuant to RSA 21-O:14.

Source. #4833, eff 6-4-90; ss by #6261, INTERIM, eff 6-1-96, EXPIRED 9-29-96

New. #6346, eff 10-1-96

Env-Ws 415.18 Change of Ownership.

(a) Within 10 days of a change of ownership of a project site, the new owner shall notify the division of the change of ownership by submitting the following information:

- (1) The name and full mailing address of the new owner;
- (2) If the new owner is a corporation, partnership, trust, or any other entity except an individual, the name and full mailing address of the person representing the for the project with whom the division can communicate regarding the project;
- (3) The name and full mailing address of the former owner; and
- (4) The permit number and site location, including street name and number, if any, and town or city in which the site is located.

(b) Upon receipt of the information required in subsection (a), the division shall amend the permit to reflect the change in ownership and shall send a copy of the amended permit to the new owner.

Source. #6346, eff 10-1-96

Env-Ws 415.19 Permit Expiration and Renewal.

(a) All permits issued under the authority of RSA 485-A:17, except for permits issued for excavation projects only, on or after the effective date of these rules shall expire 2 years from the date of issuance unless a written request for extension is submitted to the division within 90 days of the expiration date. No work shall be done on the project after the expiration of the permit unless the division has extended the permit in accordance with this section.

(b) The written request for extension shall specify the reason(s) why the extension is being sought and shall state, if true, that no changes to the original permit application and plans have been, are being or will be made, and that the project as originally proposed and permitted meets all current requirements of these rules.

(c) If changes to the original permit application have been, are being or will be made, the permit holder shall identify the changes and, if applicable, shall submit amended plans meeting the requirements of these rules showing the changes.

(d) Permits for excavation projects only shall not expire for the life of the project identified in the permit application, provided that the division receives a written update of the project status every 2 years from the date of the permit and receives plans revised to show the present project status every 6 years from the date of the permit. Revised plans shall conform to all technical requirements in existence at the time the permit was issued.

(e) If the division determines that the requested extension will not violate any statute or rule and will not cause or threaten any degradation of surface water quality, then the division shall extend the permit for a reasonable amount of time, based on considerations of the amount of work left to be done on the project and weather or other seasonal factors.

Source. #6346, eff 10-1-96

PARTS Env-Ws 416 through Env-Ws 419 - RESERVED

PART Env-Ws 420 GROUNDWATER RECLASSIFICATION

Env-Ws 420.01 Purpose. RSA 485-C establishes 4 classifications for groundwater: GAA, GA1, GA2, and GB. Since passage of the law, all groundwater in New Hampshire was classified as GB or GA2. The purpose of these rules is to establish criteria and procedures for groundwater reclassification and management of wellhead protection areas and other locally important groundwater.

Source. #5542, eff 12-24-92; ss by #6921, eff 12-24-98

Env-Ws 420.02 Definitions.

(a) “Best management practice” means “best management practice” as defined in RSA 485-C:2, II, namely “schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the risk of contamination of groundwater,” as listed in Env-Ws 421.

(b) “Class” means class of groundwater.

(c) “Contributing area” means “contributing area” as defined in RSA 485-C:2, IV, namely “the land above a class of groundwater, which is the vertical projection of the defined class on the land surface.”

(d) “Department” means the New Hampshire department of environmental services.

(e) “GAA”, means “GAA” as defined in RSA 485-C:5, I, namely “Groundwater in this class is within the wellhead protection area for wells which presently are used or well sites which have been identified for future use as drinking water supply for public water systems.”

(f) “GA1”, means “GA1” as defined in RSA 485-C:5, I, namely “groundwater in a defined zone of high value for present or future drinking water supply.”

(g) “GA2”, means “GA2” as defined in RSA 485-C:5, I, namely “groundwater within aquifers identified as highly productive for potential use as a public water supply by the U.S. Geological Survey regional groundwater studies, or other regional studies.”

(h) “GB”, means “GB” as defined in RSA 485-C:5, I, namely “groundwater not assigned to a higher class”.

(i) “Inventory inspection” means a field verification conducted by the department or a local entity to determine that an activity within a proposed groundwater classification that is identified as a potential contamination source actually uses, handles, or stores regulated substances subject to best management practices listed in Env-Ws 421.

(j) “Local entity” means “local entity” as defined in RSA 485-C:2, X, namely “a town or city, acting through a planning board, conservation commission, water department, health officer, or other duly constituted municipal unit; a village district established under RSA 52 or its predecessor statutes; an entity

established by intergovernmental agreement under RSA 53-A; or a supplier of water for wellhead protection areas tributary to wells owned by the public water system.”

(k) “Management inspection” means a periodic inspection conducted by a local entity to ensure that potential contamination source activities are in compliance with applicable best management practices.

(l) “Potential contamination source” means human activities or operations upon the land surface, as listed in RSA 485-C:7, which pose a foreseeable risk of introducing regulated substances into the environment in such quantities as to degrade the natural groundwater quality.

(m) “Regulated container” means any portable device in which material is stored, transported, treated, disposed of, or otherwise handled, with a capacity of 5 gallons to 1,100 gallons, which has in it a regulated substance(s) and, which if full, would contain 1 pound or more of that regulated substance(s). The term does not include fuel tanks attached to and supplying fuel to a single motor vehicle.

(n) “Regulated substance” means either:

- (1) “Oil” means “oil” as defined pursuant to RSA 146 - A:2, III; or
- (2) A substance listed in 40 CFR 302, 7-1-90 edition, with the following exclusions:
 - a. Ammonia;
 - b. Sodium hypochlorite;
 - c. Sodium;
 - d. Acetic acid;
 - e. Sulfuric acid;
 - f. Potassium hydroxide; and
 - g. Potassium permanganate.

(o) “Transmissivity” means “transmissivity” as defined in RSA 485-C:2, XVI, namely “the rate at which water is transmitted through a unit width of a water-bearing formation under a unit hydraulic gradient. It is equal to the hydraulic conductivity times the saturated thickness of the formation, and is given in units of length squared per unit time.”

(p) “Wellhead protection area” means “wellhead protection area” as defined in RSA 485-C:2, XVIII, namely “the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield.”

Source. #5542, eff 12-24-92; ss by #6921, eff 12-24-98

Env-Ws 420.03 Procedures for Reclassification of Groundwater to GAA or GA1.

(a) A local entity requesting reclassification of groundwater to GAA or GA1 shall submit the following to the department on forms provided by the department:

- (1) The date of the request;
- (2) The name of the local entity;

- (3) The name, address, and telephone number of a contact person for the local entity;
 - (4) Whether the request is for reclassification to GAA or GA1;
 - (5) The names of the municipalities in which the groundwater is located;
 - (6) The names of the USGS 7.5 minute series quadrangle maps showing the area in which the groundwater is located; and
 - (7) The signature of the local governing body if the local entity is a duly constituted municipal unit.
- (b) A request for reclassification submitted under Env-Ws 420.03(a) shall include:
- (1) A wellhead protection area delineation performed in accordance with Env-Ws 420.08 if the request is for reclassification to GAA;
 - (2) A definition of the contributing area of high value groundwater for present or future drinking water supply prepared in accordance with Env-Ws 420.09 if the request is for reclassification to GA1;
 - (3) A description of the informational meeting if the local entity chooses to hold one, held in accordance with Env-Ws 420.10 including the following information:
 - a. The date of meeting;
 - b. The location of meeting;
 - c. The number of people attending; and
 - d. The location where meeting notice was posted and newspaper in which it was published;
 - (4) A potential contamination source inventory report prepared in accordance with Env-Ws 420.12; and
 - (5) A potential contamination source management program prepared in accordance with Env-Ws 420.13.

Source. #5542, eff 12-24-92; ss by #6921, eff 12-24-98

Env-Ws 420.04 Procedures for Requesting a Review of Groundwater Classified GAA or GA1.

- (a) A person requesting that the department review a contributing area classified as GAA or GA1 to determine if the requirements for inventory and management of potential contamination sources are being met shall submit a report to the department that details non-compliance with the criteria for the present classification.
- (b) The department shall respond to a request for review under this section in accordance with the procedures outlined in RSA 485-C:9, V(a), and shall notify in writing the person requesting the review and the local entity of its actions.
- (c) The department shall recommend reclassification of the contributing area to GB or GA2 if the area is within a highly productive aquifer identified by the U.S. Geological Survey and the following criteria are met:

- (1) The department finds a deficiency in the inventory and management program under review, and finds that the deficiency has not been corrected in accordance with RSA 485-C:9, V(a); and
- (2) The department further finds that it has inadequate resources to take over the inspection and management program.

(d) Prior to reclassification to GB or GA2 a public hearing shall be held following notice in accordance with RSA 485-C:9, VI and Env-Ws 420.07(b).

Source. #5542, eff 12-24-92; ss by #6921, eff 12-24-98

Env-Ws 420.05 Procedures for Requesting a Reclassification of Groundwater to GA2.

(a) Upon receipt of a report or study which identifies areas of bedrock or stratified drift aquifers which are highly productive for public water supply, the department shall recommend to the commissioner that a reclassification to GA2 should occur.

(b) The request shall include:

- (1) The date, title, and author of the report or study;
- (2) The names of the municipalities in which the groundwater is located;
- (3) A summary of the report or study; and
- (4) A narrative explaining the reasons for the request.

Source. #5542, eff 12-24-92; ss by #6921, eff 12-24-98

Env-Ws 420.06 Procedures for Requesting Boundary Changes to an Existing Groundwater Classification.

(a) A request to change a boundary of an existing groundwater classification shall be submitted by the local entity requesting boundary change, on forms provided by the department.

(b) Requests to change a boundary of an existing groundwater classification shall include the following information:

- (1) The date of the request;
- (2) The name, address, and telephone number of the person making the request;
- (3) The name of the local entity;
- (4) The classification and location of groundwater under review;
- (5) USGS 7.5 minute series quadrangle map showing the existing and proposed boundaries of the groundwater classification; and
- (6) A narrative explaining the reasons for the request.

(c) If the department determines that the request is based on information not presented at the time of the initial classification of the groundwater, then the department shall take action on the request in accordance with Env-Ws 420.07.

Source. #5542, eff 12-24-92; ss by #6921, eff 12-24-98

Env-Ws 420.07 Department Action on Requests for Reclassification of Groundwater or for Boundary Changes to Existing Classifications.

(a) Upon receipt of a request for reclassification of groundwater to GAA or GA1 which contains all of the information specified in Env-Ws 420.03, or for a boundary change which contains all of the information specified in Env-Ws 420.06, or for a request for reclassification to GA2 which contains all of the information specified in Env-Ws 420.05, the department shall acknowledge receipt of the request in writing to the local entity and/or the person making the request, and shall schedule and issue notice of a public hearing on the request in accordance with RSA 485-C:9, VI.

(b) The following procedures shall apply to the public hearing required for groundwater reclassification:

- (1) A record of the hearing shall:
 - a. Be kept by tape recording;
 - b. Be made available to the public; and
 - c. Be provided to the public upon request and payment of the reproduction costs;
- (2) The presiding officer of a hearing shall be the commissioner or his/her designee;
- (3) The presiding officer shall:
 - a. Regulate the course of the hearing;
 - b. Rule upon issues of procedure; and
 - c. Take any other action necessary for the efficient and orderly conduct of the hearing, consistent with applicable state laws and rules;
- (4) The presiding officer shall open the hearing by describing in general terms the purpose of the hearing and procedures governing its conduct;
- (5) Anyone wishing to submit written testimony or exhibits shall do so to the presiding officer, provided such testimony is signed and dated;
- (6) Anyone wishing to testify shall submit his/her name, address, and whom he/she represents, if anyone, in writing to the presiding officer;
- (7) The presiding officer shall call each person to present his/her testimony;
- (8) The order of oral testimony shall be as follows:
 - a. The party requesting reclassification;
 - b. Landowners within the subject groundwater classification;
 - c. Other interested parties; and
 - d. Interested state agencies;
- (9) At the conclusion of each person's testimony, he/she shall remain available to answer questions from the presiding officer;

- (10) Person's who wish to submit written testimony, shall have 14 days after the hearing to do so;
 - (11) The presiding officer shall terminate any comments or discussions that are not relevant to the subject of the hearing;
 - (12) When the presiding officer determines that no person has further comments, he/she shall close the hearing;
 - (13) If additional time is requested to submit supplemental information which the presiding officer determines to be relevant to the subject of the hearing, he/she shall designate a specific time period for the record to remain open;
 - (14) If requested by a party to the hearing and the presiding officer determines that it is necessary to continue the hearing to obtain all parties' comments, and that no person will be prejudiced by a continuance, the presiding officer shall order that the hearing be continued at a later date, time, and place;
 - (15) If such later date, time, and place are known at the time of the hearing that is being continued, such date, time, and place shall be stated on the record; and
 - (16) If such later date, time, and place are not known at the time of the hearing that is being continued, the presiding officer shall state how notice will be given of the date, time, and place of the continued hearing.
- (c) Following the public hearing, the commissioner shall notify in writing the party requesting reclassification or boundary change and the local entity of his/her decision on the request.

Source. #5542, eff 12-24-92; ss by #6921, eff 12-24-98

Env-Ws 420.08 Wellhead Protection Area Delineations.

(a) A local entity requesting reclassification to GAA shall prepare, or shall request the department to prepare, wellhead protection area delineations.

(b) The request shall:

(1) Be submitted on or with forms provided by the department; and

(2) Include the following:

- a. The date of the request;
- b. The name of the local entity;
- c. The municipality in which the well is located;
- d. The name and EPA identification number of the well;
- e. The well type;
- f. The population and municipalities served by the well;
- g. The name, address, and telephone number of the well owner and a contact person;
- h. The street address and locus map of well location;
- i. Hydrogeological or engineering reports, if available; and
- j. Any site specific information available for the well site, that is available, such as well siting report(s), boring logs, and pumping test report(s).

(c) If the local entity is performing the delineation for department review, the request shall include all information utilized.

(d) The wellhead protection area delineations shall be based on the information specified in (b).

(e) Upon reclassification to GAA, any challenge to the delineated boundaries shall be made in accordance with Env-Ws 420.06.

Source. #5542, eff 12-24-92; ss by #6921, eff 12-24-98

Env-Ws 420.09 Defining Groundwater for Present or Future Drinking Water Supply.

(a) A local entity requesting reclassification to GA1 shall identify areas that are currently used or will be used for future drinking water supply on USGS 7.5 minute series topographic maps.

(b) The requestor under (a) above shall provide a map, accompanied by a report, which includes the following information:

- (1) The relationship of the proposed area to existing or planned drinking water supplies, including any hydrogeologic information which supports the definition of the area drawn on the map; and
- (2) A description of the extent to which the groundwater is or will be used for drinking water purposes.

(c) Upon reclassification to GA1, any challenge to the delineation shall be made in accordance with Env-Ws 420.06.

Source. #5542, eff 12-24-92; ss by #6921, eff 12-24-98

Env-Ws 420.10 Informational Meeting. An informational meeting may be held by the local entity seeking reclassification prior to performing an inventory inspection or developing a management program in order to explain to interested parties that it is seeking reclassification of groundwater. If the local entity is not a private supplier of water, the estimated cost of seeking and maintaining reclassification shall be presented. The notice of this informational meeting shall be published by the local entity in a newspaper in general circulation in the municipality involved and shall be posted in at least 2 public places.

Source. #5542, eff 12-24-92; ss by #6921, eff 12-24-98

Env-Ws 420.11 Performing an Inventory of Potential Contamination Sources.

(a) A local entity requesting reclassification to GAA or to GA1 shall perform an inventory of potential contamination sources, which shall consist of a review of human activities to determine whether potential contamination sources listed in RSA 485-C:7 are being conducted within the proposed groundwater classification.

(b) The local entity requesting reclassification shall submit an inventory report in accordance with Env-Ws 420.12 on forms provided by the department.

Source. #5542, eff 12-24-92; ss by #6921, eff 12-24-98

Env-Ws 420.12 Inventory Report. The inventory report shall include:

- (a) The information required by RSA 485-C:8, II; and
- (b) A description of how the inventory was performed and what sources were used to ensure its completeness.

Source. #5542, eff 12-24-92; ss by #6921, eff 12-24-98

Env-Ws 420.13 Management Program.

(a) A local entity requesting reclassification to GAA or to GA1 shall include in its request, a potential contamination source management program in accordance with RSA 485-C:8, III.

(b) The potential contamination source management program requested in (a) above shall include the following:

- (1) A description of the process for updating the inventory at intervals no greater than 3 years;
- (2) A description of the process for written notification to the owner of each potential contamination source listed in the inventory, at intervals no greater than 3 years;
- (3) A list of the names of all property owners within the contributing area of the proposed groundwater classification, and their addresses, and tax map and lot numbers;
- (4) A list of all facilities requiring or having release detection permits issued in accordance with Env-Wm 1403 within the contributing area of the proposed groundwater classification;

- (5) The process for performing a management inspection in accordance with Env-Ws 420.14 of all potential contamination sources located within the contributing area, at least once every 3 years to ascertain compliance with best management practices for preventing groundwater contamination. However, pesticides regulated under RSA 420:28-48 and agricultural operations which are operated in compliance with all applicable chapters of RSA title XL and best management practices developed, administered and enforced by the New Hampshire department of agriculture shall not be subject to inspection under these rules, pursuant to RSA 485-C:8, III, (c) (1) and (2); and
- (6) An assessment of the ability of the local entity to implement and maintain the potential contamination source management program.
- (c) The written notification to each potential contamination source shall include:
- (1) The name and address of the contact person for the local entity requesting reclassification, and, for GAA areas, the location of the well(s) for which the contributing area was delineated;
 - (2) A statement that the potential contamination source is in either a wellhead protection area, or is an area likely to have groundwater below it that is drawn to a community water supply well, or an area of potential use for future public water supply;
 - (3) A statement of what the present use of the property is and a statement that it is considered to have potential for groundwater contamination;
 - (4) A copy of Env-Ws 421, "Best Management Practices";
 - (5) A statement that any unpermitted discharge to groundwater, or contamination of groundwater, is illegal under RSA 485-A:13 and Env-Wm 1403 and Env-Ws 1500; and
 - (6) The name and phone number of a contact person and affiliated agency to call at the local level and at the state level to answer any questions about the program.

Source. #5542, eff 12-24-92; ss by #6921, eff 12-24-98

Env-Ws 420.14 Performance of Management Inspections.

(a) Management inspections of potential contamination sources in groundwater classified as GAA or GA1 shall be conducted by a local entity at least once every 3 years. However, pesticides regulated under RSA 430:28-48 and agricultural operations which are operated in compliance with all applicable chapters of RSA title XL and best management practices developed, administered, and enforced by the New Hampshire department of agriculture shall not be subject to inspection under these rules.

(b) The local entity shall provide written notice of any violations of best management practices to the owner of the potential contamination source within 30 days of the date of the management inspection.

(c) Inability to gain access to a potential contamination source for the purpose of conducting a management inspection shall be reported by the local entity to the local health officer and to the department.

Source. #6921, eff 12-24-98

PART Env-Ws 421 BEST MANAGEMENT PRACTICES

Env-Ws 421.01 Purpose. The purpose of these rules is to establish the minimum required management practices to be employed when performing activities that require the use of regulated substances, so that the risk of groundwater contamination is minimized.

Source. #5543, eff 12-24-92, EXPIRED: 12-24-98

New. #6947, eff 2-25-99

Env-Ws 421.02 Applicability.

(a) Subject to (b), below, these rules shall apply only to potential contamination sources listed in RSA 485-C:7 that purchase, handle, or store any regulated substances in regulated containers.

(b) Pursuant to RSA 485-C:11, I, these rules shall not apply to:

- (1) Potential contamination sources listed in RSA 485-C:7, II(j); or
- (2) Those regulated substances defined as pesticides under RSA 430:28 ,XXVI.

(c) Potential contamination sources shall be subject to inspections by the department in any area.

Source. #5543, eff 12-24-92, EXPIRED: 12-24-98

New. #6947, eff 2-25-99

Env-Ws 421.03 Definitions.

(a) "Department" means the New Hampshire department of environmental services.

(b) "Floor drain" means an opening in a floor that is not specifically included in an authorized discharge under one or more of the following regulatory mechanisms:

- (1) A NH groundwater discharge permit;
- (2) A registration required by Env-Ws 1500;
- (3) A national pollutant discharge elimination system permit; or
- (4) A local authorization to discharge to the local wastewater treatment facility.

(c) "Impervious surface" means a surface through which regulated contaminants cannot pass when spilled. The term includes concrete and asphalt unless unsealed cracks or holes are present, but does not include earthen, wooden, or gravel surfaces or other surfaces which could react with or dissolve when in contact with the substances stored on them.

(d) "Potential contamination source" means "potential contamination source" as described in RSA 485-C:7, I, namely, "human activities or operations upon the land surface shall be considered potential contamination sources if the activity or operation poses a reasonable risk that regulated contaminants may be introduced into the environment in such quantities as to degrade the natural groundwater quality." The term includes those sources listed in RSA 485-C:7, II.

(e) "Regulated container" means any device in which a regulated substance is stored, transported, treated, disposed of, or otherwise handled, with a capacity of greater than or equal to 5 gallons. The term does not include fuel tanks attached to and supplying fuel to a motor vehicle.

(f) "Regulated substance" means either:

- (1) "Oil" means "oil" as defined pursuant to RSA 146-A:2, III; or

(2) A substance listed in 40 CFR 302, 7-1-90 edition, with the following exclusions:

- a. Ammonia;
- b. Sodium hypochlorite;
- c. Sodium hydroxide;
- d. Acetic acid;
- e. Sulfuric acid;
- f. Potassium hydroxide; and
- g. Potassium permanganate.

(g) "Secondary containment" means a structure, such as a berm or dike with an impervious surface, which is adequate to hold any spills or leaks at 110% of the volume of the largest regulated container in the storage area.

(h) "Storage area" means a place where a regulated container is kept for a period of 10 or more consecutive days.

(i) "Work sink" means a sink necessary for the performance of activities that require use of a regulated substance, excluding the following instances:

(1) When there are flow through process systems involving a steady, variable, recurring, or intermittent flow of materials during operation; and

(2) When discharge from the sink is not authorized to discharge into the environment under one or more of the following regulatory mechanisms:

- a. A NH groundwater discharge permit;
- b. A registration required by Env-Ws 1500;
- c. A national pollution discharge elimination system permit; or
- d. A local authorization to discharge to the local wastewater treatment facility.

Source. #5543, eff 12-24-92, EXPIRED: 12-24-98

New. #6947, eff 2-25-99

Env-Ws 421.04 Storage of Regulated Substances.

(a) All hazardous wastes shall be stored in compliance with applicable federal regulations and state requirements as specified in RSA 147-A and rules adopted pursuant thereto.

(b) Regulated containers, other than all on-premise use heating tanks or aboveground or underground storage tanks regulated under Env-Wm 1401 and Env-Wm 1402, shall be stored in an area having an impervious surface. The impervious surface shall be inspected to ensure no cracks or holes exist prior to storage of any regulated containers and annually thereafter during continued use of the storage area.

(c) Storage areas, for other than all on-premise use heating tanks or aboveground or underground storage tanks regulated under Env-Wm 1401 and Env-Wm 1402, shall be secured against unauthorized entry by personal surveillance, physically-restricted access, or a combination of personal surveillance and physically-restricted access.

(d) Storage areas shall be inspected weekly for signs of spills and/or leakage from regulated containers. The aisle space between regulated containers which cannot be moved by hand shall be of ample size to allow an inspector to determine the condition of individual regulated containers.

(e) Regulated containers, other than on-premise use heating tanks or aboveground or underground storage tanks regulated under Env-Wm 1401 and Env-Wm 1402, in outside storage areas shall be kept covered at all times unless substances are actively being added to or removed from the regulated container or the regulated containers are in the process of being transferred to another location. If a regulated container is kept in an area with secondary containment, the covering shall be sufficient to keep bermed areas beneath it free of rain, snow, or ice.

(f) Regulated containers, other than on-premise use heating tanks or aboveground or underground storage tanks regulated under Env-Wm 1401 and Env-Wm 1402, in outside storage areas, shall not be stored within any of the following:

- (1) For surface waters, 50 feet;
- (2) For private wells, 75 feet; or
- (3) The protective radius of any public water supply well.

(g) Regulated containers, other than on-premise use heating tanks or aboveground or underground storage tanks regulated under Env-Wm 1401 and Env-Wm 1402, in outdoor storage areas, shall have secondary containment. Aboveground storage tanks shall also be subject to secondary containment requirements contained in 40 CFR 112, where applicable.

(h) Regulated containers, other than on-premise use heating tanks or aboveground or underground storage tanks regulated under Env-Wm 1401 and Env-Wm 1402, in outdoor storage areas, shall not be closer than 50 feet to a storm drain unless there is secondary containment as specified in Env-Ws 421.04(g).

(i) Each regulated container shall be clearly and visibly labeled with the chemical and trade name of the material stored within.

(j) Each regulated container shall remain closed and sealed at all times except to add or remove regulated substances. Regulated containers equipped with spigots, valves, or pumps shall be considered closed and sealed, provided that drip pans are placed and maintained under the spigots, valves, or pumps.

(k) Spill control and containment equipment, including as a minimum, absorbents to pick up spills and leaks, shall be readily available.

Source. #5543, eff 12-24-92, EXPIRED: 12-24-98

New. #6947, eff 2-25-99

Env-Ws 421.05 Use of Regulated Substances.

(a) Funnels and drip pans shall be used when transferring regulated substances from or to regulated containers.

(b) Fueling or transferring regulated substances from or to containers shall be done only over an impervious surface.

Source. #5543, eff 12-24-92, EXPIRED: 12-24-98

New. #6947, eff 2-25-99

Env-Ws 421.06 Floor Drains. Interior floor drains shall discharge to a holding tank registered in accordance with Env-Ws 1500.

Source. #5543, eff 12-24-92, EXPIRED: 12-24-98

New. #6947, eff 2-25-99

Env-Ws 421.07 Work Sinks. Work sinks shall discharge to a holding tank registered in accordance with Env-Ws 1500.

Source. #5543, eff 12-24-92, EXPIRED: 12-24-98

New. #6947, eff 2-25-99

Env-Ws 421.08 Holding Tanks. Holding tanks which receive discharges from floor drains or work sinks shall be registered and maintained in accordance with Env-Ws 1500.

Source. #5543, eff 12-24-92, EXPIRED: 12-24-98

New. #6947, eff 2-25-99

Env-Ws 421.09 Release Response Information.

(a) Release response information in accordance with (b), below, shall be posted at every storage area.

(b) Release response information shall contain the information necessary to contact emergency response personnel, including the following:

- (1) The name of the person designated by the owner to be contacted if a spill occurs;
- (2) The method by which the designated person should be contacted, such as by phone, or in person at the main office when there is a release;
- (3) The procedure for spill containment; and
- (4) Emergency phone numbers including:
 - a. State police;
 - b. Local police and fire department;

- c. Local hospital;
- d. Department of environmental services;
- e. Poison control center; and
- f. Office of emergency management.

Source. #5543, eff 12-24-92, EXPIRED: 12-24-98

New. #6947, eff 2-25-99

Env-Ws 421.10 Waivers.

(a) The rules contained in this part are intended to apply to a variety of conditions and circumstances. It is recognized that strict compliance with all rules prescribed herein might not fit every conceivable situation. Thus, persons subject to these rules may request a waiver of specific rules outlined in this part in accordance with this section.

(b) All requests for waivers shall be submitted in writing to the department and include the following information:

- (1) A description of the facility or site to which the waiver request relates, including the name, address, and identification number of the facility or site;
- (2) A reference to the specific section of the rules from which a waiver is being sought;
- (3) A full explanation of why a waiver is necessary;
- (4) A full explanation with supporting data of the alternative(s), if any, proposed to be implemented or used in lieu of the section's requirements; and
- (5) A full explanation of how the proposed alternative(s), if any, is consistent with the intent of RSA 485-C and would adequately protect human health and the environment.

(c) The department shall approve a request for a waiver upon finding that the provisions of RSA 485-C will be met and human health and the environment will be protected under the terms of the requested waiver.

(d) No waiver shall be granted which, in the judgment of the department, contravenes the intent of RSA 485-C or these rules.

(e) The department shall issue a written response to a request for a waiver within 90 days of receipt of the request. If the department denies the request, the reasons(s) for the denial shall be clearly stated in the written response.

Source. #5543, eff 12-24-92, EXPIRED: 12-24-98

New. #6947, eff 2-25-99

Env-Ws 421.11 Compliance by Political Subdivisions.

(a) The rules in this chapter have been developed and are intended to protect public health and the environment. All entities who engage in the activities regulated under these rules are encouraged to fully comply with the rules. Regardless of any exemption(s) from specific requirements of these rules pursuant to (b), below, all entities that engage in the activities regulated by these rules remain fully responsible for

complying with all applicable statutes, such as those which prohibit the discharge of pollutants to groundwater.

(b) No specific requirement in these rules that is new, expanded or modified as compared to any requirement in effect prior to November 28, 1984, shall apply to a political subdivision unless such requirement:

- (1) Is fully funded by the state;
- (2) Is approved for funding by a vote of the local legislative body of the political subdivision;
- (3) Does not necessitate local expenditures in addition to those already required for compliance with the requirement in effect prior to November 28, 1984; or
- (4) Implements a federal statute or regulation with which the political subdivision would otherwise be required to comply by the federal government.

Source. #6947, eff 2-25-99

PARTS Env-Ws 422 through Env-Ws 429 - RESERVED

PART Env-Ws 430 SURFACE WATER QUALITY REGULATIONS - MOVED TO Env-Ws 1700

Source. #1881, eff 12-7-81; ss by #2707, eff 5-15-84,
EXPIRED: 5-15-90

New. #4896, eff 8-3-90; ss by #6301, INTERIM, eff 8-2-96,
EXPIRES: 11-30-96; ss by #6351, eff 10-5-96; ss and
moved by #7151, eff 12-10-99

PARTS Env-Ws 431 through Env-Ws 450 - RESERVED

PART Env-Ws 451 WATER QUALITY CERTIFICATION

Env-Ws 451.01 Purpose. The purpose of the rules in Env-Ws 451 through Env-Ws 455 is to set forth the procedures for issuance of state certification pursuant to section 401 of the federal clean water act (CWA).

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

Env-Ws 451.02 Applicability. The rules in Env-Ws 451 through Env-Ws 455 shall apply to persons seeking a federal permit or license which may result in a discharge to surface waters of the state under Section 401 of the CWA. These rules shall not apply to the certification of National Pollutant Discharge Elimination System permits.

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

PART Env-Ws 452 DEFINITIONS

Env-Ws 452.01 “Applicant” means any person who applies for a section 401 water quality certification under these rules.

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

Env-Ws 452.02 “Discharge” means any addition of pollutants to the surface waters of the state, or release of water which alters the physical, chemical or biological condition of surface waters of the state.

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

Env-Ws 452.03 “Division” means the division of water, department of environmental services.

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

Env-Ws 452.04 “Licensing or permitting agency” means an agency of the federal government to which application is made for any license or permit to conduct any activity which may result in any discharge into surface waters of the state.

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

Env-Ws 452.05 “Pollutant” means any:

- (a) Dredge material;
- (b) Solid waste;
- (c) Incinerator residue;
- (d) Sewage;
- (e) Garbage;
- (f) Refuse;
- (g) Oil;
- (h) Sewage sludge;
- (i) Munitions;
- (j) Hazardous waste or substances;
- (k) Heat;
- (l) Wrecked or discarded equipment;
- (m) Rock;
- (n) Sand; or
- (o) Industrial, municipal or agricultural waste.

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

Env-Ws 452.06 “Responsible official of a government agency” means:

- (a) The individual in charge of the agency; or
- (b) Such person who has statutory authority sign a section 401 application; or
- (c) The individual to whom the person identified in (a) or (b) above has delegated the authority to sign, if the law allows for such delegation.

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

Env-Ws 452.07 “Section 401 Certificate” or “401 Certificate” means the certificate required under section 401 of the clean water act.

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

Env-Ws 452.08 “State” means the state of New Hampshire.

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

Env-Ws 452.09 “Surface waters of the state” means “surface waters of the state” as defined in RSA 485-A:2, XIV, namely “perennial and seasonal streams, lakes, ponds, and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses, and other bodies of water, natural or artificial.”

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

PART Env-Ws 453 CERTIFICATION REQUIREMENTS

Env-Ws 453.01 Certification Required.

(a) Under section 401 of the CWA, a water quality certificate shall be obtained by any applicant for a federal permit or license to conduct any activity which may result in any discharge to surface waters of the state.

(b) For any project that is authorized for inclusion under the New Hampshire State programmatic general permit (“NHSPGP”) by the Army Corps of Engineers, the section 401 certificate shall be deemed to be part of the NHSPGP.

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

Env-Ws 453.02 Recertification. A new or modified section 401 certificate shall be required for any modification of a federal permit or of an existing certified project that may result in an increased discharge to surface waters of the state, or a change in the quality of the discharge.

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

PART Env-Ws 454 APPLICATION PROCEDURES

Env-Ws 454.01 Application for 401 Certificate.

(a) Application for 401 certification shall be made to:

New Hampshire Department of Environmental Services
Water Division
29 Hazen Drive – PO Box 95
Concord, New Hampshire 03302-0095

(b) The applicant shall provide the following;

- (1) The date of application;
- (2) The name, address, phone number and the principal place of business of the applicant;
- (3) The name of the individual who shall be primarily responsible for the conduct of the activity for which certification is sought, such as the president or owner of the organization;
- (4) The nature of the activity to be conducted by the applicant;
- (5) Whether the discharge is occurring or proposed;
- (6) The location of the discharge noted on a united states geological survey quadrangle map;
- (7) The latitude/longitude of the discharge, if applicable;
- (8) The county;
- (9) The drainage basin;
- (10) The name of the receiving water;
- (11) The type of discharge, including chemical composition, quantity in cubic feet per second, frequency, and temperature;
- (12) When project construction is to be initiated;
- (13) Estimated project construction and operation period;
- (14) A plan showing the proposed project to scale including;
 - a. Project boundaries;
 - b. Location, dimensions and types of any existing and/or proposed structures; and
 - c. The location and extent of waterbodies including wetlands;

- (15) Name and addresses of adjoining riparian or littoral owners;
 - (16) A copy of the complete federal permit application;
 - (17) A copy of the wetlands permit, and RSA 485-A:17 permit, if applicable, and any other state permits and applications required by law; and
 - (18) Signature of the president, owner or chief executive officer of a company, or a responsible official of a governmental agency certifying that all information contained in the application is true and correct to the best of his/her knowledge and belief.
- (c) Application forms shall be available at the division during normal business hours from 8:00 a.m. to 4:00 p.m.

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

Env-Ws 454.02 Application Review Process.

- (a) Applications submitted without all required application information or signature(s) shall not be accepted for processing.
- (b) If the information supplied by the applicant raises questions relative to the adequacy of protection of the environment, public health, or the state's surface waters the division shall require such other information necessary to ensure compliance with these rules and to protect the public health and safety of the environment.
- (c) The division shall send written notice of its decision to the applicant and to the municipality in which the activity is located or is proposed to be located, and to the appropriate federal licensing or permitting agencies.
- (d) If certification is denied, the decision shall include a statement of the specific reasons for the denial and shall inform the applicant that the decision may be appealed to the water council, in accordance with Env-WC 200, Procedural Rules.

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

Env-Ws 454.03 Notice by Publication.

- (a) The applicant shall make newspaper notice pursuant to Env-Ws 454.04(b) of a pending permit application within 30 days after receiving notice from the division that all information and signatures required by Env 454.01(b) have been submitted. The cost of the public notice shall be borne by the applicant unless the applicant is a political subdivision and local legislative body votes to not pay for the publication, in which case the division shall bear the cost of the public notice.
- (b) The public notice shall include the following:
- (1) Name and address of applicant;
 - (2) The action requested in the application;
 - (3) A brief description of the project, including the nature and location of the discharge;

- (4) The date of final action proposed to be taken by the division upon the application;
- (5) A statement that the application information is on file with the division and may be reviewed during normal working hours; and
- (6) The name and phone number of the division contact person.

(c) Public notice shall not be required if the federal licensing or permitting agency or the NH wetlands board has provided public notice of the proposed action.

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

Env-Ws 454.04 Public Information Meeting.

(a) The division shall schedule a public meeting, if requested within 20 days of publication of the notice.

(b) Notice of the public meeting shall be published one time in a newspaper having general circulation in the county in which the discharge will occur. The notice shall be published at least 5 days prior to the date of the public meeting. The notice shall state the time, place, and nature of the public meeting.

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

PART Env-Ws 455 CERTIFICATION

Env-Ws 455.01 Modification or Revocation of Certification.

(a) Any certification issued pursuant to this rule shall be revoked or modified, as provided in (c) or (d) below, for violations of conditions of section 401 of the CWA, or violations of any condition pursuant to this certification.

(b) In proceeding to revoke or modify a certification, the division shall proceed in accordance with RSA 541-A:30 and Env-C 200.

(c) Any certification issued pursuant to this rule shall be revoked upon a determination that information contained in the application or presented in support thereof is incorrect, and that the true information, if presented, would not have resulted in a certification being issued.

(d) Any certification issued pursuant to this rule shall be modified if the division determines that:

- (1) That information was accurate when submitted but no longer reflects current conditions; or
- (2) The information was not accurate when submitted; and
- (3) The true information, if presented, would still have resulted in a certification being issued but with terms or conditions not reflected in the existing certification.

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

Env-Ws 455.02 Approval Criteria. A water quality certificate shall be issued if the application and all supporting documents meet the following conditions:

- (a) All requirements of parts Env-Ws 454 and Env-Ws 455 have been met;
- (b) All state and/or federal permits necessary for the construction and operation of the project have been obtained or shall be issued upon approval of the application by the division; and
- (c) Construction or operation of the project will not violate state surface water quality standards.

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

Env-Ws 455.03 Duration. Section 401 certificates issued pursuant to these rules shall be valid for 6 years from the date of issuance.

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

Env-Ws 455.04 Reapplication. Reapplication for section 401 certificates shall be made at least 180 days prior to expiration of existing 401 certificate.

Source. #5999, eff 3-10-95, EXPIRED:3-10-01

New. #7998, INTERIM, eff 12-6-03, EXPIRES: 6-3-04

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

APPENDIX

| RULE | STATUTE(S) IMPLEMENTED |
|------------------|---|
| Env-Ws 412.13(b) | RSA 485:16-a |
| Env-Ws 451-455 | RSA 485-A:13, I 33 U.S.C. Section 1341 (Federal Clean Water Act Section 401) |